Goods and Services Tax (GST) In India – CA Pritam Mahure

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The book is a compilation of GST related key draft legal provisions, reports and articles. Readers can also view our **videos** on GST Youtube.com/c/PritamMahure

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Goods and Services Tax (GST) in India

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1. About the book and author

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- 'Orange' colour is used for authors comments Revised Model GST Act and key words in respective sections are highlighted in **bold.**

About the Author

- CA Pritam Mahure works in the field of Indirect Taxes (Service Tax, Excise and Goods and Service Tax) since more than a decade. Pritam has also worked with leading multinational consulting organisations.
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- Pritam has authored more than 100 articles in Business Standard, Hindu, Business Line, Economic Times, Deccan Herald, Sakal, Taxmann, Taxindiaonline etc.
- Pritam has addressed more than 100 conferences/ seminars and 12,000 professionals on GST and Service Tax for CII, ASSOCHAM, NASSCOM, MCCIA, ICAI, DGST, NACEN, and Government officers across India.
- Pritam is conducting GST Awareness Campaign for CII IL by addressing seminars on GST all across India. Pritam is also assisting State Governments with respect to proposed GST.

2. Analysis of various aspects of GST

3.1 Things you must know about GST

In GST regime, all 'supply' such as sale, transfer, barter, lease, import of services etc of goods and/ or services **made for a consideration** will attract CGST (to be levied by Centre) and SGST (to be levied by State). As GST will be applicable on 'supply' the erstwhile taxable events such as 'manufacture', 'sale', 'provision of services' etc. will lose their relevance.

Further, certain supplies, even if made **without consideration**, such as permanent transfer of business assets on which credit is availed, transaction with related entities, transactions with agent etc will attract GST.

2. GST payable as per time of supply

The liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. In this regard, separate provisions prescribe what will time of supply for goods and services. The provisions contemplate payment of GST on supply of goods or services at the earliest of date of issuance of invoice or prescribed last day by which invoice is required to be issued or date of receipt of payment.

Given that there could be **multiple parameters** in determining 'time' of supply, maintaining reconciliation between revenue as per financials and as per GST could be a major challenge to meet for businesses.

3. Determining Place of Supply could be the key

At present inter-State supply of goods attract Central Sales Tax. Now, its provides that an inter-State supply of **goods** and/ or **services** will attract IGST ((i.e. CGST plus SGST). Thus, it would be crucial to determine whether a transaction is a 'intra-State' or 'Inter-State' as taxes will be applicable accordingly. In this regard, the draft GST law provides separate provisions which will help an assessee determine the place of supply for goods and services.

Typically for 'goods' the place of supply would be location where the good are **delivered**. Whereas for 'services' the place of supply would be **location of recipient**. However, there are multiple scenarios such as supply of services in relation to immovable property, services to and by SEZ etc wherein this generic principle will not be applicable and specific provisions will determine the place of supply. Thus, the business will have to scroll through all the place of supply provisions before determining the place of supply.

4. Valuation in GST

GST would be payable on the 'transaction value'. Transaction value is the **price actually paid or payable** for the said supply of goods and/or services between un-related parties. The transaction value is also said to include all expenses in relation to sale such as packing, commission etc. Even **subsidies** linked to supply, excluding Government subsidies will be includable. However, discounts/ incentives given **before or at the time** of supply will be permissible as deduction from transaction value. As regards discounts given after supply is made, the same will be permissible as deduction subject to fulfilment of prescribed conditions.

The revised law is silent on Valuation Rules which were actually part of earlier June 2016 version of GST Law.

5. Input tax credit in GST

Current CENVAT Credit regime disallows CENVAT Credit on various services such as motor vehicle related services, **catering services, employee insurance**, **construction** of civil structure etc. Similarly, State VAT laws restrict input tax credit in respect of construction, motor vehicle etc. Current, this denial of credits leads to un-necessary cost burden on assessee.

It was expected that in GST regime, seamless credit will be allowed to business houses without any denial or any restrictions except say goods / services which are availed for personal use than official use (something similar to Unite Kingdom VAT law).

However, surprisingly, *inter-alia*, aforesaid credit would continue to be not available (in respect of both goods or services). Further, credit is proposed to be denied on goods and/or services used for **personal consumption**. Also, input tax credit shall not be available on **goods lost, stolen, destroyed, written off or** disposed of by way of **gift or free samples**. This continuation of denial will lead to substantial tax cascading (as rate of GST will be higher that the current rate of service tax!). Also, another round of litigation as interpretation issues will crop up while determining eligibility or otherwise of GST paid on personal consumptions such as business lunch with clients.

7. There would be 33 GST laws in India

In GST regime, there will be one CGST law and 31 SGST law for each of the States including two Union Territories and one IGST law governing inter-State supplies of goods and services.

8. Rate of GST is not yet specified in the draft GST law

The rate of GST is **not specified** in draft GST law. However, various News reports suggest that the rates in GST regime will be 0%, 5%, 12%, 18% and 28% (plus Cess).

9. Time limit for adjudication

Time limit for adjudication of generic cases (i.e. other than fraud, suppression etc) would be **three years** and in fraud, suppression etc cases it would be **five** years. Its pertinent to note that the time limit prescribed for generic cases is much more than the current time limit prescribe in excise law (i.e. 12 months for issuance of Show Cause Notice) and service tax legislation (i.e. 30 months).

10. Old provisions re-introduced

Most of the current provisions such as reverse charge, tax deduction, pre-deposit, prosecution (!), arrest (!) etc have been continued in the proposed draft GST law.

The new GST law seems to be a new wine in old bottle as most of the current in-efficiencies has been continued in the proposed GST law.

3.2 All you wanted to know about Constitutional Amendment Bill

One of the MOST important step for introduction of Goods and Service Tax (GST) i.e. the 122nd Constitutional Amendment Bill (CAB) for introduction of GST was cleared by Lok Sabha on 6th May 2015 and by Rajya Sabha on 3rd August 2016.

In the past, to amend the Constitution, 115th CAB was introduced by the UPA Government in March 2011. However, this 115th CAB lapsed.

The rationale for introduction of CAB is that, currently, the Constitution of India does not provide for a parallel levy of indirect taxes by Centre and State which is a pre-requisite for GST. To address this, CAB was introduced in Lok Sabha.

The CAB is a starter for the approaching GST regime. In the following paragraphs let us understand in detail the key facets of CAB.

1. CAB – Enables introduction of GST

The CAB enables the Centre and State Government (including Union Territories) to introduce law for levying GST on supply of goods or services or both.

Thus, in GST regime, there will be one CGST law and one SGST law each for the States (including Union Territories).

2. 'GST' defined

The term 'GST' is defined in Article 366 (12A) to mean *"any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption'*.

Thus, all supply of goods or services or both will attract CGST (to be levied by Centre) and SGST (to be levied by State) unless kept out of purview of GST.

GST will be applicable even when the transaction involves supply of both (goods and services). In effect, woks contracts will also attract GST. As GST will be applicable on 'supply' the erstwhile taxable events such as 'manufacture', 'sale', 'provision of services' etc. will lose their relevance.

It may be noted that the term 'supply' is not defined or elaborated or qualified (such as supply for a consideration etc). Thus, it needs to be seen whether even free supply will attract GST.

3. 'Service' defined

It may be recalled that earlier 115th CAB did not provide for definition of the term 'service'. Now, this 122nd CAB specifically provides that '*services means anything other than goods*' [refer Article 366 (26A)]. This broad definition of the term 'service' will altogether remove the disputes on the aspect whether something is goods or services (unless Government proposes different rates for GST on goods or services or both).

4. IGST

At present inter-State supply of goods attract Central Sales Tax. Now, CAB provides that an inter-State supply of **goods** or **services** will attract IGST ((i.e. CGST plus SGST) [refer Article 269A].

It may be noted that IGST will be levied and collected by the Centre and proceeds of IGST will be shared amongst the Centre and the States.

5. Import of goods or services

At present, import of goods attracts Basic Customs duty (BCD), Additional Customs Duty (ACD) and Special Additional Customs Duty (SAD). As regards services, it attracts Service Tax (or Research and Development cess in few instances).

CAB provides that the import of goods or services will be *deemed* as supply of goods or services or both in the course of inter-State trade or commerce and thus it will attract IGST (i.e. CGST plus SGST). Thus, import of goods will attract BCD and IGST. It may be noted that import of services, as against service tax at present, in GST regime, will attract IGST.

6. Alcohol for human consumption

It appears that 'alcohol for human consumption' will be kept outside the GST regime. As only 'alcohol for human consumption' is excluded as a corollary it can be stated that all other sectors / goods are intended to be included in GST.

Exclusion of alcohol sector could mean that the companies manufacturing alcohol may not be in a position to avail credit of GST paid by them on their procurements.

7. Petroleum products and tobacco

Petroleum products and tobacco will continue to attract duty of excise. However, CAB specifically provides that the petroleum products may not attract GST, however, at a later stage, GST Council may decide to levy on petroleum products.

8. Role of GST Council

The CAB is silent on the key aspects of GST such as -

- How the model GST law would be?
- Which taxes, cesses, surcharges will be subsumed in GST?
- Which goods and services are subject to or exempt from GST?
- What will be the rate of GST including floor rates?
- What will be the threshold limit of GST?

However, to address the aforesaid issues, CAB provides that 'GST Council' will be formulated. The GST Council will consist of Union Finance Minister, Union Minister of State and State Finance Minister. On the aforesaid issues, GST Council will have the power to make recommendations to Centre and States.

It may be recalled that earlier 115th CAB also provided for a Dispute Settlement Authority to settle disputes between States or between States and Centre with regard to GST. However, in this CAB the GST Council has been given the authority to determine the modalities to resolve disputes arising out of its recommendations.

9. Compensation to States

It may be noted that earlier 115th CAB did not provide for compensation to States. However, this CAB specifically provides for compensation to the Sates for loss of revenue arising out of implementation of GST for 5 years.

By providing for compensation in the Constitution itself, the Centre seems to have addressed the concerns raised by the State regarding fear of loss of revenue.

3.3 Five steps to be GST ready

Its said when you want something to happen, the entire world conspires it to make it happen. And then when it actually happens, you are left wondering now what to do! Same is the feeling with Goods and Services Tax (GST) which was eluding India since so many years.

On 3rd August entire India was glued to Rajya Sabha (as if it's an India vs Pakistan cricket match!) when the Rajya Sabha successfully passed the Constitutional Amendment Bill for GST (GST Bill) which will eventually pave the way for GST in India.

Now, as the Government is likely to introduce GST from 1 April 2017, so it can be said that it is just a matter of few months (8 months to be precise) before GST may become a realty in India. So, in the following paras, the critical step plan for business to be GST ready is discussed.

1. Decode GST

It is an accepted fact that GST is not merely a tax change but a business change as it will impact all functions of an organisation such as finance, product pricing, supply chain, information technology, contracts, commercials etc. Thus, its imperative that all these functional teams should be aware about the GST. But the underlying question is what should these team members read/ refer for GST?

In this regard, its pertinent to note that most of the key aspects of the proposed GST regime are already in public domain through various such as Model CGST/ SGST and IGST Act 2016, Reports on registration, Reports on payment, Reports on refunds etc. Thus, based on this legal knowledge of GST available in public domain the organisation may consider sensitising its employees.

The organisation can consider sensitising its entire business eco-system i.e. not only the employees but also vendors (such as Tier-1, Tier-2 vendors etc) and key customers of the organisation. An early initiation of training will give the concerned employees, vendors and customers a sense of involvement in discussion much before GST legislation it is put in public domain.

2. Understand GST impact

GST may provide opportunities but at the same time it could bring threats. Given this, an organisation may consider carrying out an exercise to identify how its operations will get

impacted because of GST. For GST Impact Analysis exercise, the respective department heads such as finance, supply chain, product pricing, human resource etc should be involved to ensure that they provide their inputs and suggestions.

Going one step forward, organisations can also identify possible cost savings which key suppliers / vendors could be entitled to in the proposed GST regime. Based on the possible cost savings to suppliers / vendors, the organisations can have discussion with its vendors for passing of benefits by way of cost reduction in the coming years (i.e. after GST is introduced). Early discussion and engaging with vendors for GST will ensure maximum possible benefit to be passed on to the organisation.

Organisations will also have to take into consideration the increase (most likely!) or decrease (least likely!) in tax compliances. For most of the organisations, in GST regime, compliances are expected to increase dramatically. Take example of a service tax assessee, who currently files 2 returns on an annual basis. Now, in GST regime, Service tax assessee could be required to file as many as 61 returns (5 returns per month plus 1 annual return)!!! Thus, in human resource department will have to be informed about the GST regime so that they can anticipate the increase (and decrease in certain cases) in the manpower.

3. Gear up for transition of IT systems

Information Technology (IT) is a key area for business organisations as irrespective of the fact whether the organisation is ready or not, on the very first day GST is introduced, the information technology system of an organisation has to be ready and running else it will bring the entire business to standstill.

Take example of a retailer having multi-state presence. Currently, his IT system generates invoice/ bill with applicable respective VAT or CST. In GST regime, the IT System should generate invoice/ bill with applicable CGST and SGST or IGST. For a service provider, there could be more challenges as applicability of CGST and SGST or IGST will depend on the Place of Supply provisions (to determine whether the transaction is intra-State or Inter-State). Thus, embedding the Place of Supply provisions in the IT system could pose a major challenge.

Given this, to avoid the threat of disruption of business, it is advisable that early study should be carried out to understand how the systems migration for GST could be done.

4. Design Alternate Business Strategies

To gear up for GST regime, the organisation may identify alternate efficient business strategies to ensure smooth transition to GST. Even, supply chain strategies is expected to undergo a major change as entire India will become one market and there may not be any tax cost involved for intra-State vis-à-vis inter-State procurement of goods. An organisation will have to re-visit their pricing strategies as business competitors may well reduce prices of their product to pass on the GST benefits.

However, while forming alternate business strategies, it goes without saying that the organisation should take into consideration the commercial feasibility of alternate business strategies before these strategies are recommended.

5. Make Representation

Introduction of GST regime could affect negatively (than positively!) to few industries/ sectors. GST can have a tagline 'GST is a matter of solicitation. Please read all the law documents carefully!'. Thus, efforts should be made by the organisation to identify the possible issues for which appropriate representation could be made before the Government though various trade chambers and forums.

While current economic situation is characterised by volatile economic conditions, introduction of GST remains a ray of hope, thus early initiation of aforesaid steps can surely help the organisations gain most of the proposed GST regime. Now, it seems GST is an idea whose time has come!

3.4 Chronology on GST – Past, Present and the Future

Date	Event
1974	Report of L K Jha committee suggested moving to Value Added Tax (VAT) regime
1986	Introduction of Modified Value Added Tax (MODVAT)
1991	Chelliah Committee recommends VAT/Goods and Service Tax (GST)
1 July 1994	Service tax is introduced in India
1999	'Empowered Committee' comprising of representatives of 29 States is formed for the purpose introduction of State VAT
2000	Implementation of uniform State sales tax rates (1%, 4%, 8%, 12%)
2002	Introduction of input credit against services of same category
1 April 2003	Harayana was the first State to introduce VAT. Subsequently, other States introduced VAT (20 States in 2005, 5 States in 2006, Tamil Nadu in 2007 and lastly, Uttar Pradesh in 2008).
1 September 2004	Central level taxes integrated by introduction of 'CENVAT'
January 2005	White Paper, a policy document indicating basic policies of 'State VAT' was released by the 'Empowered Committee'
1 April 2005	Value Added Tax introduced in 20 States
February 2006	Finance Minister Mr. P. Chidambaram comments in the Budget Speech that there is a large consensus that the country must move towards a national level GST that must be shared between the Center and States. He proposes 1 April 2010 as the date for introducing GST.
1 April 2006	VAT implemented in 5 more States
1 January 2007	VAT implemented in Tamil Nadu
April 2007	Central Sales Tax phase out initiated (4% → 2%)
May 2007	Empowered Committee (EC) of State Finance Ministers in consultation with Central Government, constituted a Joint Working Group (JWG), consisting of officers of Central and State Governments to examine various models and options for GST and to give their assessment of the same to the EC.
November 2007	Joint Working Group (JWG) presented its report on the GST to the EC. The EC accepted the report on GST submitted by the JWG
1 January 2008	VAT implemented in Uttar Pradesh
April 2008	Empowered Committee finalises the overall strategy for GST introduction in India

November 2009	'First Discussion Paper' on GST is released by EC
December 2009	Task Force submits its report on GST to 13th Finance Commission
January 2009	Department of Revenue releases its comments on 'First Discussion Paper' on GST
February 2011	IT strategy (by Mr Nandan Nilekani) for GST released
March 2011	115th Constitution Amendment Bill introduced in Parliament. However, this 115th CAB was lapsed (in May 2014) with change of Government at Center.
1 April 2011	Point of Taxation Rules, 2011 introduced
1 July 2012	- Negative List of Services Regime introduced - Place of Provision of Services Rules, 2012 introduced
July 2014	Union Finance Minister states in the Budget Speech 2014 that "I do hope we are able to find a solution in the course of this year and approve the legislative scheme which enables the introduction of GST"
19 December 2014	The 122nd Constitutional Amendment Bill (hereafter referred as CAB) was introduced in Lok Sabha
6 May 2015	The 122nd CAB passed in Lok Sabha
6 May 2015	122nd CAB introduced in Rajya Sabha. 122nd CAB was referred to Select Committee of Rajya Sabha
22 July 2015	Rajya Sabha Select Committee tabled its report
October 2015	the Government has placed in the public domain four reports on key business processes i.e. registration, payment, refunds and returns in GST regime.
14th June 2016	Draft GST law made available
3 August 2016	Rajya Sabha cleared the Constitutional Amendment Bill
8 August 2016	Lok Sabha cleared the Constitutional Amendment Bill
September/ October	- More than half of the State Assemblies need to ratified the Constitutional Amendment Bill - Presidential Assent received - GST Council formed
November	- Final GST law put in public domain
December	- GST law likely to be tabled in Parliament

3.5 What is GST?

GST is abbreviation for Goods and Service Tax. GST is also known as Value Added Tax (VAT) in few countries.

GST / VAT is a consumption based tax wherein the basic principle is to tax the value addition at the each business stage. To achieve this, tax paid on purchases is allowed as a set off/ credit against liability on output/income.

GST is levied on all transaction of goods and services. Thus, in principle, GST should not differentiate between 'goods' and 'services'.

Internationally, GST was first introduced in France and now more than 150 countries have introduced GST. Most of the countries, depending on their own socio-economic formation, have introduced National level GST or Dual GST.

GST is different from the current tax structure in many ways. Currently, taxes treat goods and services differently. As mentioned above, 'goods' attract Excise at manufacturing level and VAT at the time of sale. In contrast, services attract only one levy i.e. Services tax on provision of taxable services.

This distinction, in GST regime, would loose its importance as both goods and services would be treated as par for taxing purposes. A transaction in goods and services for a consideration would attract CGST and SGST. Also, the State Government now gets the power to tax services and Central Government gets the power to levy tax at the distribution and retail level.

GST may resolve, not all, but surely, most of the current issues such as the classification, valuation, double taxation disputes etc. On a positive note, most of the credit which is not available will be available in GST regime such as the service provider will be eligible to avail credit of VAT, Luxury tax, Entertainment Tax etc. The compliances are also expected to reduce drastically.

3.6 GST in India

Structure: India is proposing to implement 'dual GST'. In 'dual GST' regime, all the transactions of goods and services made for a consideration would attract two levies i.e. CGST (Central GST) and SGST (State GST).

Taxes that will be subsumed in GST: GST would be levied on all the transactions of goods and services made for a consideration. This new levy would replace almost all of the indirect taxes. In particular, it would replace the following indirect taxes:

At Central level

- Central Excise Duty (including Additional Duties of Excise)
- Service Tax
- CVD (levied on imports in lieu of Excise duty)
- SACD (levied on imports in lieu of VAT)
- Central Sales Tax

At State level

- VAT/Sales tax
- Entertainment tax (unless it is levied by the local bodies)
- Luxury Tax
- Taxes on lottery, betting and gambling
- Entry tax not in lieu of Octroi
- Cesses and Surcharges

However, certain items / sectors would be outside the GST regime. Products such as alcohol, petroleum products are outside GST regime. Further, Land and properties may remain outside since they are neither goods nor services.

Looking at the international practices on GST, it would be advisable that the products outside GST regime should be minimum as allowing parallel levies will only add to cascading effect than any good to industry/economy.

Administration: CGST and IGST will be administered by 'Central Government' and SGST will administered by the respective State Governments.

Law relating to GST: In GST regime, there will be one CGST law and 31 SGST law for each of the States including two Union Territories and one IGST law governing inter-State supplies of goods and services.

Mechanism of input tax credit in GST: Input tax credit of CGST would be available for payment of CGST and input tax credit of SGST would be available for payment of SGST. However, cross utilization of tax credit between the Central GST and the State GST would be allowed in the case of inter-State supply of goods and services under the IGST model.

Interstate transactions in GST: All the inter-State transactions of goods and services would attract IGST (which would be CGST plus SGST). The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST.

Composition scheme: There would be option available to tax payers having turnover less than Rs. 50 lacs can *opt* for Composition scheme wherein they need to discharge tax at a floor rate of 1% or 2.50% (for manufacturers) CGST and SGST each.

Exports and SEZ: Exports would be zero rated, as currently they are. In case of SEZ, if the supply of goods or services is for consumption in processing zone then it would be zero rated.

Imports: Even under GST regime, Customs duty would be levied on import of goods in India. Currently, import of 'goods' suffers CVD (in lieu of Excise duty) and SACD (in lieu of VAT). On import of taxable services, Service tax is attracted. In GST regime, IGST would be levied on import of goods and services.

Special Area Schemes: The exemptions available under Special Industrial Area Schemes would continue up to legitimate expiry time both for the Centre and the States. Later, after the introduction of GST, the tax exemptions, remissions etc. related to industrial incentives would be converted, if at all needed, into cash refund schemes.

3.8 Rate of GST

Rate of GST is one of the most important and contentious issues. Before we understand what could be the rate of proposed GST, lets understand the current rates of indirect taxes on goods and services.

The different rates of taxes on goods and services is tabulated below:

Particulars	Goods	Services
Excise duty	12.50%/ 6% / 2%	-
VAT	12.50% / 13.50% / 14% /5%	-
CST	2% (against Form C)	-
Local Body Tax	0.10% to 8%	-
Service Tax	-	15%

Recently, the Finance Minister shared that the likely rates for GST could be as under:

Particular	Rates	Reference
Nil rate	0%	Food grains
Concessional rate	5%	Mass consumption products used by common people
Standard rate 1	12%	Most products
Standard rate 2	18%	
Luxury goods	28% plus cess	Luxury items (such as luxury cars, aerated drinks and tobacco)
Other Rates		
Compounding rate	1%/2.50%	Section 9
TDS/TCS	1%	Section 46/ 56

Further, it appears that the Government has decided the slabs however the list of goods and their respective rates are yet to be made shared. As regards exemptions, the exemptions under Centre and State are likely to be aligned.

It is worth noting that the proposed cumulative rate of GST is much higher than the Revenue Neutral Rate suggested by the Thirteenth Finance Commission (TFC) [5% CGST and 7% SGST] and CEA Arvind Subramanium (17%-18%).

3.9 Supply Chain and GST

Warehouses – CST has been a major rationale for setting up of warehouses in past

An inter-State sale of goods is liable to Central Sales Tax @ 2% (subject to declaration forms). CST paid on purchase of goods is not available as set-off. Thus, it results in cost in the supply chain transaction.

Given this, to avoid the applicable CST of 2%, most of the Companies have set up branches /warehouses in different States. It has been observed that some of the Companies have more than 30 branches /warehouses in the Country only to save CST cost[1].

However, in GST regime, an Inter-State transaction in 'goods' will attract Integrated Goods and Service Tax (IGST). Credit of IGST paid on purchase would be available against output GST liability.

Given the above, the current rationale (i.e. to save CST) for setting up branches/ warehouses in various States will become redundant. In view of this, many Companies which have set up branches/ warehouses in different States only to save CST may reconsider their decision and may consolidate their branches/ warehouses.

Area based incentives[2]

Most of area based incentives are approaching their legitimate expiry time. In GST regime, the tax exemptions, remissions etc. related to industrial incentives, if at all needed, would be converted into cash refund schemes.

In GST regime (post expiry of area based incentives schemes), the Companies may re-consider shifting their factories to other locations.

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[1] However, many States (such as Maharashtra, Gujarat) have introduced provisions for reduction in input tax credit of VAT for stock transfers. This also results in loss of tax credits to businesses.

[2] Area Based Incentives are offered by the Governments to promote investment in a particular State/location such as Baddi (Himachal Pradesh), Kutch (Gujarat) etc

Availment of credit

Currently there are restrictions on **availment of credit** for a service provider. A logistic service provider cannot avail credit of VAT paid on inputs procured. This becomes a cost in the supply chain.

Further, a trader or retailers or malls cannot avail credit of Service tax and excise duty paid on their purchases. Currently, a retail mall owner will not be able to avail credit of Service tax charged by a logistic service provider and thus it becomes a cost in the transaction. In GST the aforesaid will change to a certain extent (discussed in detail in later chapters).

An opportunity

In GST regime, in view of removal CST on inter-State sales, the warehousing decisions will be based on business needs than tax considerations.

Also, expiry of Area Based Exemptions may lead to change in current manufacturing locations to another locations based on business needs than tax considerations.

Cumulatively, the aforesaid will open an window of opportunity to logistic and warehousing companies as the there would be centralization of warehouses and manufacturing locations.

3.10 When will GST be introduced in India?

In the past, the Government quite a few times announced the date to introduce GST and the said date has been postponed again and again. Earlier, the date for introduction of GST was April 2010 then it became April 2011 and then April 2012 and so.

Today, even an astrologer can't answer the question on date of introduction of GST!

Having said the above, following important steps show Government is actively working on GST :

a. 122nd Constitutional Amendment for GST is already passed by Lok Sabha and Rajya Sabha
b. Contract to manage IT infrastructure already awarded to Infosys
c. GST law is already revised and available in public domain

Our Prime Minister Shri. Narendra Modi and Finance Minister Mr Arun Jetley has repeatedly assured that the new proposed date i.e. 1 April 2017 will be followed.

The aforesaid surely shows that the Government is committed to introduction of GST. In view of the aforesaid discussion, in case the date of introduction of GST is postponed, still looking at the commitment level, one cannot rule out introduction of GST in near future say 1 July 2017 or October 2017.

Also, one may not be surprised if the Government hurriedly introduces GST (as it introduced Negative List of services approach without giving sufficient time to industry).

3.11 GST - International Scenario

Internationally, GST was first introduced in France and now more than 150 countries have introduced GST. Most of the countries, depending on their own socio-economic formation, have introduced National level GST or Dual GST. We have discussed below key features of GST prevalent in some of the countries.

United Kingdom[3]

Particulars	Details
Name	Value Added Tax
Date of introduction	01.04.1973
Scope	▪ Supply of goods or services made in UK ▪ Intra-community procurements from EU members ▪ Importation of goods and services
Standard Rate	20 %
Reduced rate	5 % and exempt and zero rated
Threshold exemption limit	£ 73,000
Liability arises on	**Accrual Basis:** On raising of invoice or receipt of consideration or supply (of goods or services), whichever is earlier. **Cash basis** (if turnover is below £1.35 million): On receipt of consideration
Payment	Usually quarterly returns. However, small business can opt for annual returns filing.
Export	Exports are 'Zero' rated.
Exempt services	1. Medical and education 2. Finance, insurance, postal services
Innovative concept	To ease the VAT administration, the assessee is informed at the time of registration itself as to which of the three quarterly cycle it should follow for filling the VAT returns.

Canada[4]

Particulars	Details
Name	Federal Goods and Service Tax & Harmonized Sales Tax

[3] Source www.hmrc.gov.uk

[4] Source cra-arc.gc.ca

Date of introduction	GST 01.01.1991 & HST 01.04.1997
Scope	Taxable supplies of goods and services
Standard Rate	GST 5% and HST varies from 0% to 15%
Reduced rates	Exempt and Zero rated
Threshold exemption limit	Canadian $ 30,000
Liability arises on	On accrual (date of invoice, date of issue of invoice) or receipt of consideration, whichever is earlier.
VAT returns and payments	Depending on the turnover, tax needs to be deposited either monthly, quarterly or annually.
Reverse charge mechanism	Reverse charge applies to importation of services and intangible properties.
Export	Exports are 'Zero' rated.
Exempt services	1. Supply of real estate 2. Financial Services and residential renting 3. Supplies by charities 4. Health, education services
Innovative concept	A group concern can supply to another group concern at zero rate

Australia[5]

Particulars	Details
Name	Goods and Service Tax
Date of introduction	01.07.2000
Scope	▪ Taxable supplies of goods and services made which are connected with Australia and made for a consideration by a registered (or required to be registered) person in the course of business enterprises ▪ Importation of goods
Standard Rate	10 %
Reduced rate	0 %
Threshold exemption limit	$ 75,000

[5] Source www.ato.gov.au

Liability arises on	Accrual basis: On raising of invoice or receipt of consideration, whichever is earlier. Cash basis [an option available to assessee having turnover below $ 2 million]: On receipt of consideration.
Payment	Depending on the turnover, the tax needs to be deposited either monthly, quarterly or annually.
Due date for payment	Tax needs to be deposited on 21st day following the end of the month/quarter/year.
Reverse charge mechanism	Reverse charge applies to supplies made by non-residents
Export	Exports are 'Zero' rated.
Exempt services	1. Government supplies such as water services, drainage services etc. 2. Health, education, religious supplies Financial Services and residential renting 3. Vegetable, fruit, meat
Innovative concept	'Group registration' wherein a single consolidated return for the group can be filed.

Republic of China[6]

Particulars	Details
Name	Value Added Tax
Date of introduction[7]	01.01.1994
Scope	▪ Taxable supplies of goods and services for consideration in China by a taxable person in the course or furtherance of a business ▪ Importation of goods The scope of VAT in China is particularly on 'goods'. At present, only two services (viz. Repair services & Service of supply of goods as per customers requirement) attract VAT.
Standard Rate	17 %
Reduced rates	13%, 6%, 4%, 3 % and 0%

[6] Source Chinatax.gov.cn

[7] Recently, China introduced Shanghai VAT Pilot Project

Liability arises on	On raising of invoice or receipt of consideration, whichever is earlier. However, in case of payments in installments, the relevant date when the installment is due.
Payment	Depending on the turnover if it is monthly or quarterly then payment within 15 days from end of the month or quarter
Due date for VAT return	Within 15 days from end of the month/ quarterly
Export	Exports are 'zero' rated.
Exempt services	1. Agricultural products and fertilizers 2. Contraceptives, Second hand goods (by individuals)
Innovative concept	Small businesses can pay VAT @ 3% (however input tax credit would not be available).

New Zealand[8]

Particulars	Details
Name	Goods and Service Tax
Date of introduction	01.10.1986
Scope	▪ Supply of goods or services made in New Zealand by a registered person ▪ Importation of goods
Standard Rate	15 %
Reduced rate	Zero rated and exempt
Threshold exemption limit	NZ$ 60,000
Liability arises on	On raising of invoice or receipt of consideration, whichever is earlier.
Returns	Depending on the turnover it is either monthly, bi-monthly or six-monthly
Due date for returns and payment	On 28th day following the end of the month or bi-month or six-month. However, different date for the certain periods.
Reverse charge mechanism	Reverse charge applies to supply of services made by non-residents.
Export	Exports are 'zero' rated.

[8] Source ird.govt.nz

Exempt services	1. Real estate 2. Financial services 3. Residential rental
Innovative concept	The headline price in advertisement and stores must be always GST-inclusive except when supplies are to whole-sale clients.

Singapore[9]

Particulars	Details
Name	Goods and Service Tax
Date of introduction	01.04.1994
Scope	▪ Supplies of goods and services in Singapore by a taxable person in the course or furtherance of a business ▪ Importation of goods
Standard Rate	7 %
Reduced rate	Zero rated and exempt
Threshold exemption limit	Singapore $ 1 million
Liability arises on	On raising of invoice or receipt of consideration or supply (of goods or services), whichever is earlier.
Returns	Usually quarterly returns. However, business can opt for monthly returns.
Due date for returns and payment	Last day of the month following the end of the month or quarter.
Reverse charge mechanism	Reverse charge applies to supply of services
Export	Exports are 'zero' rated.
Exempt services	Real estate, Financial services, Residential rental
Innovative concept	Divisional registration wherein if an assessee has several divisions he may register the said divisions separately. Each such division should submit its own return. The supplies between the divisions are ignored for GST purposes.

European Union

Particulars	Details

[9] Source iras.gov.sg

Name	Value Added Tax
Territory	Of the 27 states the prominent states are: United Kingdom, France, Germany, Sweden, Spain, Italy, Ireland, Poland, Austria, Belgium, Denmark, Netherland, Portugal, Hungary. EU is a 'single market' meaning the goods and services can move freely in cross border trade between member states.
Scope	**Supplies to Taxable persons**: VAT is payable by the taxable person on acquisition (i.e. purchaser) at the rate applicable in his (acquirer's) country **Supplies to non-taxable persons**: VAT is payable by supplier (i.e. seller)
Standard Rate	Minimum 15 %
Reduced rates	5 % and 0 %
For threshold exemption limit, payment, etc	Refer specific country

4. Model CGST/SGST Act, 2016

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Central / State Goods and Services Tax Act, 2016.

(2) It extends to the whole of India / State's name.

(3) It shall come into force on such date as the Central or a State Government may, by notification in the Official Gazette, appoint in this behalf:

PROVIDED that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Author comments: Its important to note that unlike Service Tax legislation (which does not apply to Jammu & Kashmir), GST will apply throughout India.

2. Definitions

In this Act, unless the context otherwise requires,-

(1) "**actionable claim**" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);

(2) **"address of delivery"** means the address of the recipient of goods and/or services indicated on the tax invoice issued by a taxable person for delivery of such goods and/or services;

(3) "**address on record**" means the address of the recipient as available in the records of the supplier;

Author comments: Address on record is relevant for determining Place of Supply as per section 9 of IGST Act.

(4) "**adjudicating authority**" means any authority competent to pass any order or decision under this Act, but does not include the Board,

the Revisional Authority, Authority for Advance Ruling, Appellate Authority for Advance Ruling, the First Appellate Authority and the Appellate Tribunal;

(5) "**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 on behalf of another, whether disclosed or not;

Author comments: As per section 3 (1) (c) of the Act, following, inter-alia, even without consideration will qualify as supply

'3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.'

Further, as per section 128 of revised GST law *'where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall be* ***jointly and severally*** *liable to pay the tax payable on such goods under the Act.'*

(6) "**aggregate turnover**" means the aggregate value of all taxable supplies, exempt supplies, exports of goods and/or services and inter-State supplies of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

Explanation.- Aggregate turnover does not include the value of inward supplies on which tax is payable by a person on reverse charge basis under sub-section (3) of Section 8 and the value of inward supplies.

Author comments: The aggregate turnover shall be computed on all India basis. Further, surprisingly, the term aggregate turnover includes turnover of exempt supplies as well!

(7) "**agriculture**" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants;

Explanation.– For the purpose of this clause, the expression 'forest' means the forest to which the Indian Forest Act, 1927 (XVI of 1927) applies.

Author comments: The term agriculture is relevant for Schedule V of GST Act wherein its specified that an agriculturist, for the purpose of agriculture shall not be liable for registration. Further, Schedule IV specifies that services provided by a Government or local authority to individuals in discharge of its statutory powers or functions such as assignment of right to use natural resources to an individual farmer for the purpose of agriculture shall be neither supply of goods nor a supply of services.

(8) "**agriculturist**" means a person who cultivates land personally, for the purpose of agriculture;

(9) "**Appellate Tribunal**" means the National Goods and Services Tax Appellate Tribunal constituted under section 100;

(10) "**appointed day**'' means the date on which section 1 of this Act comes into effect;

(11) "**appropriate Government**" means the Central Government in case of the IGST and the CGST, and the State Government in case of the SGST;

(12) "**assessment**" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment;

(13) "**associated enterprise**" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961(43 of 1961);

(14) **"audit"** means examination of records, returns and other documents maintained or furnished by the taxable person under this Act or rules made thereunder or under any other law for the time being in force to verify, inter alia, the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or rules made thereunder;

Author comments: As per section 53 (3) of 'Every registered taxable person whose turnover during a financial year **exceeds the prescribed limit** shall get his accounts audited by a **chartered accountant** or a cost accountant and shall submit to the proper officer a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 39 and such other documents in the form and manner as may be prescribed in this behalf.'

(15) "**authorized bank**" shall mean a bank or a branch of a bank authorised by the appropriate Government to collect the tax or any other amount payable to the appropriate government under this Act;

(16) "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(17) "**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) services provided by a race club by way of totalisator or a licence to book maker in such club;

Explanation.- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall be deemed to be business.

Author comments: The definition is very wise as even a single transaction may get covered under the ambit of 'business'.
Further, Explanation specifically provides that Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall be **deemed to be business**. It is pertinent

to note that Schedule IV provides list of activities by Central, State Government and Local Authorities as neither goods nor services.

(18) **"business vertical"** means a distinguishable component of an enterprise that is engaged in supplying an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business verticals;

Explanation: Factors that should be considered in determining whether products or services are related include:

(a) the nature of the products or services;

(b) the nature of the production processes;

(c) the type or class of customers for the products or services;

(d) the methods used to distribute the products or provide the services; and

(e) if applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.

Author comments: A person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed. Further as per section 10 (2) a person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as **distinct persons** for the purposes of this Act.

(19) "**capital goods**" means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business;

Author comments: The term capital goods is now defined in a simple manner to state that capital goods mean goods, the value

of which is capitalised in the books of accounts. In the earlier draft GST law the term 'Capital goods' was defined in a lengthy manner basis its definition in CENVAT credit Rules.

(20) "**casual taxable person**" means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;

Author comments: As per section 23 even a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business. Section 24 provides for special provisions relating to casual taxable person and non-resident taxable person. Further, as per Schedule V, a casual taxable person has to obtain registration, irrespective of the threshold.

(21) "**CGST**" means the tax levied under the Central Goods and Services Tax Act, 2016;

(22) **"chartered accountant"** means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949);

(23) "**commissioner**" means the Commissioner of Central Goods and Services Tax / Commissioner of State Goods and Services Tax and includes Principal Commissioner of Central Goods and Services Tax / Principal Commissioner of

State Goods and Services Tax / Chief Commissioner of State Goods and Services Tax appointed under section 4 of the Central/State Goods and Services Tax Act, 2016;

(24) "**common portal**" means the common GST electronic portal approved by the Central Government and State Governments, on

the recommendation of the Council, for the specified purposes, as may be notified under this Act;

Author comments: Process of enrolment and transition of existing taxpayers has already been initiated in various States including Maharashtra. Once provisional id and password, GST registration process can be initiated at GST.gov.in

(25) "**common working days**" in respect of a State shall mean such days in succession which are not declared as a gazetted holiday by the Central Government or the concerned State Government;

(26) **"company secretary"** means a company secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980);

(27) **"composite supply"** means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration *:* Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

Author comments: The term composite supply is used at in the definition of 'supply' [section 3 (5)]. In this regard, the tax liability on a **composite or a mixed supply** shall be determined in the following manner:

(a) a **composite supply** comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;

(b) a **mixed supply** comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

(28) "**consideration**" in relation to the supply of goods or services includes

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include **any subsidy given by the Central Government or a State Government;**

(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

PROVIDED that a deposit, whether refundable or not, given in respect of the supply of goods or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

Author comments: The term Consideration is defined in an inclusive manner. Even payment by any other person than a recipient can qualify as consideration. Any subsidy given by the Central Government or a State Government shall not form part of consideration.

As regards, deposits (whether refundable or not) given in respect of the supply of goods and/or services it is stated that the same shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply.

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

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

(30) "**continuous supply of goods**" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis;

Author comments: The term continuous supply of goods is used in the section 28 (4) which prescribes time limit for issuance of invoice as under:

'In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received'

(31) "**continuous supply of services**" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such service as the Central or a State Government may, whether or not subject to any condition, by notification, specify;

Author comments: The term continuous supply of services is used in the section 28 (5) which prescribes time limit for issuance of invoice.

(32) "**conveyance**" includes a vessel, an aircraft and a vehicle;

(33) "**cost accountant"** means a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959);

(34) "**Council**" means the Goods and Services Tax Council established under Article 279A of the Constitution;

(35) **"credit note"** means a document issued by a taxable person as referred to in sub-section (1) of section 31;

(36) **"debit note"** means a document issued by a taxable person as referred to in sub-section (3) of section 31;

(37) "**deemed exports**", as notified by the Central Government/State Government on the recommendation of the Council, refer to those transactions in which the goods supplied do not leave India, and payment for such supplies is received either in Indian Rupees or in convertible foreign exchange;

Author comments:

This definition of 'deemed exports' is in line with the definition used in Foreign Trade Policy. The 'Deemed Exports' as defined in the Foreign Trade Policy means those transactions in which the goods supplied do not leave the country and the supplier in India receives the payment for the goods. In days to come, GST Act may notify the transaction which can be treated as deemed export.

(38) "**document**" includes written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000 (21 of 2000);

(39) "**earlier law**" means any of the following laws, that is to say,

(a) . . .

(b) . . .

(c) . . .

as amended from time to time and includes enactments which have validated anything done or omitted to be done under any of the above mentioned laws and also any law repealed by the earlier laws but continued in force under any provisions of the above enumerated laws;

(40) "**electronic cash ledger**" means the electronic cash ledger referred to in sub-section (1) of section 44;

(41) '**electronic commerce**' means supply of goods and/or services including digital products over digital or electronic network;

(42) '**electronic commerce operator**' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

(43) "**electronic credit ledger**" means the electronic credit ledger referred to in sub-section (2) of section 44;

Author comments: In GST regime, the amount of credit to be available will be auto-populated (GSTR-2) by the GST system based on the Outward supply returns (GSTR-1) filed by the vendors. Thus, effectively the availment and utilisation of credit will be through electronic ledger. This mechanism is currently operational in Maharashtra VAT through J1 and J2 forms.

(44) "**exempt supply**" means supply of any goods and/or services which are not taxable under this Act and includes such supply of goods and/or services which attract nil rate of tax or which may be exempt from tax under section 11 ;

(45) "**First Appellate Authority**" means an authority referred to in section 98;

(46) "**first stage dealer**" means a dealer, who purchases the goods directly from,-

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

Author comments: The term First Stage Dealer is used in section 169 which permits the credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations.

(47) "**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;

Author comments: The term fixed establishment is used in section 2 (17) and (18) of IGST Act which defined location of recipient of service and location of recipient of service respectively.

(48) "**fund**" means the Consumer Welfare Fund established under section 51;

(49) "**goods**" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Author comments: GST is applicable on supply of goods. Goods are defined to include movable property, actionable claim etc
In the earlier version of Model GST Law the term 'goods' included securities. Now, this revised draft specifically excludes securities from ambit of 'goods' as well as 'services' exclude '**securities'**.
Intangibles are excluded from the definition of 'goods' and specifically included in the definition of 'services'.

(50) "**government**" means Central Government and its departments, a State Government and its departments and a Union territory and its departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required

to be kept in accordance with Article 150 of the Constitution or the rules made thereunder;

(51) **"IGST"** means the tax levied under the Integrated Goods and Services Tax Act, 2016;

(52) "**input**" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

Author comments: Inputs is defined to mean:

a. Any goods
b. Other than capital goods
c. Used or intended to be used
d. By a supplier
e. In the course or furtherance of business

This is a wider definition as any goods, except capital goods, will qualify as inputs, provided that they are used or intended to be used in the course or furtherance of business.

(53) "**input service**" means any service used or intended to be used by a supplier in the course or furtherance of business;

Author comments: Input service is defined to mean:

a. Any service
b. Used or intended to be used
c. By a supplier
d. In the course or furtherance of business

This is a wider definition as any service, will qualify as input service, provided that they are used or intended to be used in the course or furtherance of business.

(54) "**Input Service Distributor**" means an office of the supplier of goods and / or services which receives tax invoices issued under section 28 towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier

of taxable goods and / or services having same PAN as that of the office referred to above;

Author comments: Section 21 and 22 of the GST Act provides for special provisions for Input Service Distributor.

(55) "**input tax**" in relation to a taxable person, means the IGST, including that on import of goods, CGST and SGST charged on any supply of goods or services to him and includes the tax payable under sub-section (3) of section 8, but does not include the tax paid under section 9;

(56) "**input tax credit"** means credit of 'input tax' as defined in sub-section (55);

(57) "**intra-State supply of goods**" means the supply of goods in the course of intra-State trade or commerce in terms of sub-section (1) of section 4 of IGST Act, 2016;

(58) "**intra-State supply of services** " means the supply of services in the course of intra-State trade or commerce in terms of sub-section (2) of section 4 of IGST Act, 2016;

(59) **"invoice"** shall have the meaning as assigned to it under section 28;

(60) "**inward supply**" in relation to a person, shall mean receipt of goods and/or services whether by purchase, acquisition or any other means and whether or not for any consideration;

(61) "**job work**" means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression "job worker" shall be construed accordingly;

Author comments: Section 20 and 55 of the GST Act provides for special provisions for job work.

Further, Schedule V which deals with Persons Liable To Be Registered provides that the supply of goods, after completion of

job-work, by a registered job-worker shall be treated as the supply of goods by the "principal" referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

(62) **"local authority" means**

(a) a "Panchayat" as defined in clause (d) of Article 243 of the Constitution;

(b) a "Municipality" as defined in clause (e) of Article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under Article 371 of the Constitution; or

(g) a Regional Council constituted under Article 371A of the Constitution;

(63) **"manufacturer"** shall have the meaning assigned to it by the Central Excise Act, 1944 (1 of 1944);

Author comments: Section 9 provides higher rate of composition levy (2.50%) for a manufacturer.

(64) "**market value**" shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods and/or services 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;

Author comments: Section 90 which deals with Confiscation of goods and/or conveyances and levy of penalty provides uses the term market value.

(65) "**money**" means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognized by the Reserve Bank of India when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

(66) "**mixed supply**" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply;

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

Author comments: The term mixed supply is used at in the definition of 'supply' [section 3 (5)]. In this regard, the tax liability on a **composite or a mixed supply** shall be determined in the following manner:

(a) a **composite supply** comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;

(b) a **mixed supply** comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

(67) "**motor vehicle**" has the meaning assigned to it in clause (28) of section 2 of **the** Motor Vehicles Act, 1988 (59 of 1988);

(68) "**non-resident taxable person**" means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India;

(69) "**non-taxable territory"** means the territory which is outside the taxable **territory**;

(70) "**notification**" means notification published in the Official Gazette and the expressions 'notify' and 'notified' shall be construed accordingly;

(71) "**output tax**" in relation to a taxable person, means the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis;

(72) "**outward supply**" in relation to a person, shall mean supply of goods or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other means made or agreed to be made by such person in the course or furtherance of business;

(73) "**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, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013 (18 of 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 cooperative societies;

(j) a local authority;

(k) government;

(l) society as defined under the Societies Registration Act, 1860 (21 of 1860);

(m) trust; and

(n) every artificial juridical person, not falling within any of the preceding sub-clauses;

(74) "**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, provides or receives goods and/or services; 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;

(75) "**prescribed**'' means prescribed by the rules, regulations or by any notification issued under this Act;

(76) **"principal"** means a person on whose behalf an agent carries on the business of supply or receipt of goods and/or services;

(77) "**principal place of business**" means the place of business specified as the principal place of business in the certificate of registration ;

(78) "**principal supply**" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is

ancillary and does not constitute, for the recipient an aim in itself, but a means for better enjoyment of the principal supply;

Author comments: The term principal supply is relevant for composite supply.

(79) **"proper officer"** in relation to any function to be performed under this Act, means the officer of goods and services tax who is assigned that function by the Commissioner of CGST / SGST;

(80) "**quarter"** shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

(81) "**recipient**" of supply of goods and/or services means-

(a) where a consideration is payable for the supply of goods and/or services, 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;

Explanation.- The expression "recipient" shall also include an agent acting as such on behalf of the recipient in relation to the goods and/or services supplied.

(82) "**registered importer**" means the importer registered in terms of the provisions of Central Excise Rules, 2002;

(83) "**regulations**" means the regulations made by the Commissioner under any provision of the Act on the recommendation of the Council;

(84) persons shall be deemed to be "**related persons**" if only -

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) any person directly or indirectly owns, controls or holds twenty five per cent or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family;

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Author comments:

This section defines 'related persons' for the purpose of GST Act. This definition is relevant from the perspective of sr. no. 2 and 4 of Schedule I [Matters to be treated as supply even if made without Consideration] as discussed under:

'…

2. Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.

…

4. Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business'

(85) "**removal**", in relation to goods, means -

(a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier, or

(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

(86) "**return**" means any return prescribed or otherwise required to be furnished by or under this Act or rules made thereunder;

(87) "**reverse charge**" means the liability to pay tax by the recipient of supply of goods or services instead of the supplier of such goods or services in respect of such categories of supplies as notified under sub-section (3) of section 8;

Author comments:

At present, similar provisions of Reverse Charge are available in Service Tax for the services like Manpower supply, Works contract, Goods Transport Agencies etc. In GST regime reverse charge may be applicable for both services as well as **goods**.

(88) "**rules**" means the rules made by the Central/State Government under any provision of the Act on the recommendation of the Council;

(89) **"schedule"** means a schedule appended to this Act;

(90) "**securities**" shall have meaning assigned to it in sub-section (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(91) "**second stage dealer"** means a dealer who purchases the goods from a first stage dealer as defined in sub-section (46);

(92) **"services"** means anything other than goods;

Explanation 1.- Services include transactions in money but does not include money and securities;

Explanation 2.- Services does not include transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form,

currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Author comments:
The definition of service is very wide as it means anything other than goods.

(93) **"SGST"** means the tax levied under the State Goods and Services Tax Act, 2016;

(94) "**supplier**" in relation to any goods and/or services shall mean the person supplying the said goods and/or services and shall include an agent acting as such on behalf of such supplier in relation to the goods and/or services supplied;

(95) **"supply''** shall have the meaning as assigned to it in section 3;

(96) "**tax**" means goods and services tax levied on the supply of goods and/or services under this Act and includes any amount payable under section 9 or subsection (10) of section 18;

(97) "**tax period**'' means the period for which the return is required to be filed;

(98) **"taxable person''** shall have the meaning as assigned to it in section 10;

(99) "**taxable supply**'' means a supply of goods and/or services which is chargeable to tax under this Act;

(100) "**non-taxable supply**'' means a supply of goods or services which is not chargeable to tax under this Act;

(101) "**taxable territory**'' means the territory to which the provisions of this Act apply;

(102) **"Tax Return Preparer"** means any person who has been approved to act as a Tax Return Preparer under the scheme framed under section 43

(103) "**telecommunication service**" means service of any description (including electronic mail, voice mail, data services, audio text

services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means;

(104) "**time of supply of goods**'' shall have the meaning as assigned to it in section 12 ;

(105) "**time of supply of services**'' shall have the meaning as assigned to it in section 13;

(106) "**to cultivate personally"** means to carry on any agricultural operation on one's own account-

(a) by one's own labour, or

(b) by the labour of one's family, or

(c) by servants on wages payable in cash or kind **[**(but not in crop share)**]** or by hired labour under one's personal supervision or the personal supervision of any member of one's family;

Explanation 1. - A widow or a minor or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.

Explanation 2. - In the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

(107) "turnover **in a State**" means the aggregate value of all taxable supplies, exempt supplies, exports of goods and / or services made within a State by a taxable person and inter-state supplies of goods and / or services made from the State by the said taxable person excluding taxes, if any charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

Explanation.- Aggregate turnover does not include the value of inward supplies on which tax is payable by a person on reverse charge basis under sub-section (3) of Section 8 and the value of inward supplies.

(108) **"usual place of residence"** means

(a) in case of an individual, the place where he ordinarily resides;

(b) in other cases, the place where the person, as defined in sub-section (73), is incorporated or otherwise legally constituted;

(109) "**valid return**" means a return furnished under sub-section (1) of section 34 on which self-assessed tax has been paid in full;

(110) "**works contract**" means a contract wherein **transfer of property in goods is involved in the execution of such contract** and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property;

(111) "**zero-rated supply**" means supply of any goods and/or services in terms of section 15 of the IGST Act 2016; and

(112) Words and expressions not defined in this Act shall have the meaning assigned to them in the **Integrated Goods and Services Tax Act, 2016**.

3. Meaning and scope of supply

(1) **Supply** includes—

(a) all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

(b) importation of services, for a consideration whether or not in the course or furtherance of business, and

(c) a supply specified in Schedule I, made or agreed to be made without a consideration.

(2) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(3) Notwithstanding anything contained in sub-section (1),

(a) activities or transactions specified in schedule III; or

(b) activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as specified in Schedule IV,

shall be treated neither as a supply of goods nor a supply of services.

(4) Subject to sub-section (2) and sub-section (3), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods; or

(c) neither a supply of goods nor a supply of services.

(5) The tax liability on a composite or a mixed supply shall be determined in the following manner —

(a) a **composite supply** comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;

(b) a **mixed supply** comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

Author comments:

As per section 8 of the GST Act, CGST and SGST is leviable on all intra-State **supplies** on the value of the goods and/or services. It can be observed that the taxable event under GST regime is 'supply'.

In the current indirect tax regime, State impose 'Value Added Tax' on 'intra-State sales' and retain Central Sales Tax (CST) on inter-State

sales on origin based principle. Further, Centre imposes Excise Duty at the stage of "Manufacture" and Service Tax on the "Provision of Service". As far as local authorities concern it impose various taxes like LBT Local Body Tax), Octroi etc. Under GST regime all taxable event or activity like manufacture, provision of services etc. becomes irrelevant and GST will apply on 'supply'.

The term 'supply' has been defined in an inclusive manner (like definition of 'manufacture' in excise). As per **clause 1(a)** Supply is said to include certain transactions like sale, transfer, barter, etc. made or agreed to be made for a consideration by a person in the course or furtherance of business. Thus, under clause 1 (a) an activity of sale transfer etc will qualify as supply if it is made or agreed to be made for a consideration by a person in the course or furtherance of business.

As per **clause 1 (b)** includes importation of service **for a consideration** whether or not in the course or furtherance of business.

As per **clause 1 (c)** supply specified in the schedule I even made or agreed to be made without consideration will be liable to GST. The schedule I comprises of following list of matters or transactions:

1. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.
3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Sr. no. 2 aforesaid will cover stock/ branch transfer of goods.

It may be noted that earlier draft law contained few additional entries which are now deleted[10].

Clause (2)

As per this clause certain matters covered in the Schedule II shall be used to determine whether given supply will be treated as supply of 'goods' and supply of 'services'. Schedule II clarifies the certain transaction whether should be treated as goods or services so as to avoid litigation.

CHAPTER II

ADMINISTRATION

4. Classes of officers under the Central Goods and Services Tax Act

(1) There shall be the following classes of officers under the Central Goods and Services Tax Act, namely;

(a) Principal Chief Commissioners of CGST or Principal Directors General of CGST,

(b) Chief Commissioners of CGST or Directors General of CGST,

(c) Principal Commissioners of CGST or

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[10] 1. Temporary application of business assets to a private or non-business use

2. Services put to a private or non-business use

3. Assets retained after deregistration

4. Supply of goods and/or services by a taxable person to another taxable or non- taxable person in the course or furtherance of business.

Principal Additional Directors General of CGST,

(d) Commissioners of CGST or
Additional Directors General of CGST,

(e) Additional Commissioners of CGST or
Additional Directors of CGST,

(f) Joint Commissioners of CGST or
Joint Directors of CGST,

(g) Deputy Commissioners of CGST or
Deputy Directors of CGST,

(h) Assistant Commissioners of CGST or
Assistant Directors of CGST, and

(i) such other class of officers as may be appointed for the purposes of this Act.

4. Classes of officers under the State Goods and Services Tax Act

(1) There shall be the following classes of officers and persons under the State Goods and Services Tax Act namely.

(a) [Principal/Chief] Commissioner of SGST,

(b) Special Commissioners of SGST,

(c) Additional Commissioners of SGST,

(d) Joint Commissioners of SGST,

(e) Deputy Commissioners of SGST,

(f) Assistant Commissioners of SGST, and

(g) such other class of officers and persons as may be appointed for the purposes of this Act.

(2) The Commissioner shall have jurisdiction over the whole of the State of (….). All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

5. Appointment of officers under the Central Goods and Services Tax Act

(1) The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act.

PROVIDED that the persons appointed as officers under the State Goods and Services Tax Act of a State shall be deemed to be appointed as officers under this Act for the purposes of section 7 of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax.

[CGST]

5 Appointment of officers under the State Goods and Services Tax Act

(1) The Government may appoint such persons as it may think fit to be officers under the State Goods and Services Tax Act:

PROVIDED that the persons appointed as officers under the Central Goods and Services Tax Act shall be deemed to be appointed as officers under this Act for the purposes of section 7 of this Act.

(2) The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the State Government may specify.

[SGST]

6. Powers of officers under the Central Goods and Services Tax Act

(1) Subject to such conditions and limitations as the Board may impose, an officer of the Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services Tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate its powers to any other officer subordinate to him.

(4) Notwithstanding anything contained in this section, a First Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on
an officer of Central Goods and Services Tax other than those specified in section 98 of this Act.

[CGST Act]

6. Powers of officers under the State Goods and Services Tax Act

(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State Goods and Services Tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

7. Powers of SGST/CGST officers under the Act (Draft I)

(1) Notwithstanding anything contained in this Act, the proper officers for the purposes of any one or more sections (…….) of the {SGST/CGST Act}, shall be deemed to be the proper officers for the purposes of the corresponding section or sections, as the case may be, of this Act to such extent and subject to such conditions as may be prescribed in the rules made in this behalf.

(2) Where any proper officer issues an order or acts under any one or more sections ……. of this Act, he shall also issue an order or take action, as he may deem fit, under the corresponding section of the {SGST/CGST} Act as being the proper officer under sub-section **Error! Reference source not found.** of the SGST/CGST Act as a part of his order or action under this Act, under intimation to the jurisdictional SGST/CGST officer.

(3) Any proceeding for rectification, appeal and revision, wherever applicable, of any order issued under sub-section (2) shall lie before the officer appointed under section 4 of this Act.

(4) Where a proper officer under the SGST/CGST Act has initiated a proceeding on a subject matter under any one or more sections (……) of this Act, no action under the relevant section shall be initiated under this Act on the same subject matter.

7. Powers of SGST/CGST officers under the Act (Draft II)

The officers appointed under the SGST Acts shall, , to such extent and subject to such conditions, as may be prescribed in the rules made in this behalf, be the proper officers for the purposes of sections (……..) of this Act.**]**

Author comments:

Section 4 to 7 deal with classes, appointment and powers of officer who will administer CGST and SGST.

CHAPTER III

LEVY OF, AND EXEMPTION FROM, TAX

8. Levy and Collection of Central/State Goods and Services Tax

(1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) **on all intra-State** supplies of goods and/or services on the **value** determined under section 15 and at such rates as may be notified by the Central/State Government in this behalf, but not exceeding **fourteen percent**, on the recommendation of the Council and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

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

(4) The Central or a State Government may, on the recommendation of the Council, by notification, **specify categories of services** the tax on 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 person 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

he 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.

Author comments:

Section 8 is charging section and tax shall be levied and collected on all intra-state **supplies** of the goods and/or services **on the value** and at the rate as may be notified by Centre/State but not exceeding 14%. Thus, GST is levied on **supply** of the goods and/or services as defined in section 3 of the CGST/SGST Act.

In the current regime taxable event under State Law is sale of goods and as per Section 3 of The Central Excise Act, 1944 a duty of excise is levied on production or manufacture of goods. Further, as per section 66B of the Finance Act, 1994 service tax shall be levied on value of all services provided or agreed to be provided. However under GST regime all the taxable event like manufacture, sale, provision of service becomes irrelevant and tax is levied on the Supply as defined in section 3.

Further, As per clause 2 of section 8 CGST/SGST shall be paid by every taxable person.

Intra-state supplies of the goods and/or services liable to CGST and SGST. The term intra-State supply and inter-State supply have not been defined in CGST/SGST Act and has been defined at section 3 and section 4 of IGST Act. As per section 4 of the IGST Act intra-State trade or commerce is defined to mean any supply where the 'location of the supplier' and the 'place of supply' are in the same state. Thus, to determine whether particular supply is intra-State or inter-State

will be determined on the basis of location of the supplier and place of supply as per IGST Act.

It is also provided that the intra-State supply of **goods** shall **not** include:

(i) supply of goods to or by a SEZ developer or to or by an SEZ unit;

(ii) supply of goods brought into India in the course of import till they cross the customs frontiers of India

It is also provided that the intra-State supply of **services** shall not include supply of services to or by a SEZ developer or to or by an SEZ unit.

9. Composition Levy

(1) Notwithstanding anything to the contrary contained in the Act but subject to subsection (3) of section 8, on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than **two and a half percent** in case of a manufacturer and **one percent** in any other case, of the turnover in a State during the year:

PROVIDED that **no such permission shall be granted** to a taxable person-

(a) who is engaged in the supply of services; or

(b) who makes any supply of goods which are not leviable to tax under this Act; or

(c) who makes any inter-State outward supplies of goods; or

(d) who makes any supply of goods through an electronic commerce operator who is required to collect tax at source under section 56; or

(e) who is a manufacturer of such goods as may be notified on the recommendation of the Council:

PROVIDED FURTHER that no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of this sub-section.

(2) The permission granted to a registered taxable person under sub-section (1) shall stand withdrawn from the day on which his **aggregate turnover during a financial year exceeds fifty lakh rupees.**

(3) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

(4) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 66 or 67, as the case may be, shall apply *mutatis mutandis* for determination of tax and penalty.

Author comments:

Section 8 of the Model GST Law provides for composition scheme for dealer having 'aggregate turnover' of Rs. 50 lakh by which such dealer can pay GST at a prescribed composition rate:

a. Manufacturer – 2.50%

b. Any other case – 1%

The composition scheme shall not be applicable to the taxable person supplying services, inter-State supply of goods etc. .

10. Taxable person

(1) Taxable Person means a person who is **registered or liable to be registered** under Schedule V of this Act.

(2) A person who has obtained or is required to obtain **more than one registration**, whether in one State or more than one State, shall, in respect of each such registration, be treated as **distinct persons** for the purposes of this Act.

(3) An **establishment** of a person who has obtained or is required to obtain registration **in a State**, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act.

Author comments:

Who is a Taxable Person? As per Section 2 (98) of GST Act *"taxable person' shall have the meaning as assigned to it in section 10"*. Section 9 of GST Act states that a 'Taxable Person' means a person who is registered or liable to be registered under Schedule V of this Act.

As per aforesaid section GST is applicable when aggregate turnover in the financial year exceeds Rs 20 lakh, however, if a person conducts his business in any Special States then threshold will be Rs 10 lakhs.

At present, Excise Duty in not applicable up to Rs 1.50 crore of aggregate value of turnover, MVAT is not applicable up to Rs 5 lakh of turnover of sales and Service Tax up to Rs 10 lakh value of provision of service. Now, in GST regime, it appears that the threshold is more than the current with Service Tax threshold.

11. Power to grant exemption from tax

(1) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, **by notification**, exempt generally either absolutely or

subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon with effect from the date of issue of notification or any date subsequent thereto as may be specified in the said notification.

Explanation.- Where an exemption in respect of any goods and/or services from the whole of the tax leviable thereon has been **granted absolutely**, the taxable person providing such goods and/or services bthe tax on such goods and/or services.

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

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

(4) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall

(a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette or from any date subsequent to the date of its issue as may be specified therein; and

(b) be made available on the official website of the department of the Central or a State Government.

CHAPTER IV

TIME AND VALUE OF SUPPLY

12. Time of supply of goods

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

(2) The time of supply of goods shall be the earlier of the following dates, namely,-

(a) **the date of issue of invoice** by the supplier or the **last date** on which he is required, under section 28, to issue the invoice with respect to the supply; or

(b) the date on which the supplier **receives the payment** with respect to the supply:

PROVIDED that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice.

Explanation 1.- For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.- For the purpose of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on **reverse charge** basis, the time of supply shall be the earliest of the following dates, namely—

(a) the date of the receipt of goods, or

(b) the date on which the payment is made, or

(c) the date immediately following thirty days from the date of issue of invoice by the supplier:

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

Explanation.- For the purpose of clause (b), "the date on which the payment is made" shall be the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(4) In case of supply of **vouchers**, by whatever name called, by a supplier, the time of supply shall be-

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

(b) the date of redemption of voucher, in all other cases;

(5) In case it is not possible to determine the time of supply under the provisions of sub-section (2), (3) or (4) the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed, or

(b) in any other case, be the date on which the CGST/SGST is paid.

Author comments: The liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. In this regard, separate provisions i.e. section 12 and section 13 prescribe what will time of supply for goods and services.

The provisions broadly contemplate payment of GST at the earliest for:

a. 'Goods'- Date of issuance of invoice or the last date by which invoice is required to be issued or the date of receipt of advance

b. 'Service'– Date of issuance of invoice or the last date by which invoice is required to be issued or the date of receipt of advance

Further, there are special provisions for continuous supply of goods / services, Reverse Charge Mechanism etc It can be observed that

there are many parameters in determining 'time' of supply. Thus, determining the 'time' of supply and further maintaining reconciliation between revenue as per financials and as per GST rules could be a major challenge to meet.

In GST regime tax collection event will be earliest of the specified events as given above and this will be altogether a new concept for the current VAT and Central Excise taxpayers.

13. Time of supply of services

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

(2) The time of supply of services shall be the earlier of the following dates, namely:-

(a) the **date of issue of invoice** by the supplier or the **last date** on which he is required, under section 28, to issue the invoice with respect to the supply; or

(b) the date on which the supplier **receives the payment** with respect to the supply:

PROVIDED that where the supplier of taxable service receives an amount **up to one thousand** rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice.

Explanation 1.- For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.- For the purpose of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on **reverse charge** basis, the time of supply shall be the earlier of the following dates, namely-

(a) the date on which the payment is made, or

(b) the date immediately following sixty days from the date of issue of invoice by the supplier:

PROVIDED that where it is not possible to determine the time of supply under clause (a) or (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

PROVIDED FURTHER that in case of '**associated enterprises'**, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

Explanation.- For the purpose of clause (a), "the date on which the payment is made" shall be the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(4) In case of supply of **vouchers**, by whatever name called, by a supplier, the time of supply shall be-

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

(b) the date of redemption of voucher, in all other cases;

(5) Where it is not possible to determine the time of supply of services in the manner specified in sub-sections (2), (3) or (4), the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the CGST/SGST is paid.

14. Change in rate of tax in respect of supply of goods or services

Notwithstanding anything contained in section 12 or section 13, the time of supply, in cases where there is a change in the rate of tax in respect of goods or services, shall be determined in the following manner, namely:-

(a) in case the **goods or services** have been **supplied before** the change in rate of tax –

(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to change in rate of tax but the payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment is received before the change in rate of tax, but the invoice for the same has been issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

(b) in case the goods or services have been **supplied after** the change in rate of tax -

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and the payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate

of tax, the time of supply shall be the date of issue of invoice:

PROVIDED that the date of receipt of payment shall be the date of credit in the bank account when such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation.- For the purpose of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of accounts of the supplier or the date on which the payment is credited to his bank account, whichever is earlier:

Author comments: The section applies for the change in rate of GST for services and for goods. It splits the scenarios in two baskets:

a. In case where the goods / services have been supplied **before** the change in rate of tax
b. In case where the goods / services have been supplied **after** the change in rate of tax

15. Value of taxable supply

(1) The value of a supply of goods and/or services shall be the **transaction value**, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The **value** of supply shall include:

(a) **any taxes, duties, cesses, fees and charges** levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient;

(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 and/or services;

(c) **incidental expenses**, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;

(d) **interest or late fee** or penalty for delayed payment of any consideration for any supply; and

(e) **subsidies** directly linked to the price **excluding subsidies provided by the Central and State governments**;

Explanation.- The amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any **discount** that is given:

(a) **before** or at the time of the supply provided such **discount** has been duly recorded in the invoice issued in respect of such supply; and (b) after the supply has been effected, provided that:

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.

(4) Where the value of the supply of goods or services cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed**.**

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Central or a State Government in this behalf on the recommendation of the Council shall be determined in such manner as may be prescribed.

Author comments: GST would be payable on the 'transaction value'. Transaction value is the price actually paid or payable for

the said supply of goods and/or services between un-related parties and where price is the sole consideration.

The value is said to include all expenses in relation to sale such as packing, commission etc. Even subsidies linked to supply, except provided by Government, will be includable. Even interest for delayed payment of consideration needs to be included.

Discounts

As regards discounts/ incentives, it will not form part of 'transaction value' subject to fulfilment of conditions as under:

a. Discount given **before** or **at** the time of the supply provided such discount has been duly recorded in the invoice issued in respect of such supply;
b. Discount given **after supply is effected** provided that:
   (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
   (ii) input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier

Taxes

In current regime of indirect taxes paid are not included in the price on which tax/ duty is charged. However, GST will be payable on all the taxes other than tax paid as CGST, SGST or IGST. This may hamper the very basic objective of removing cascading effect of taxes.

CHAPTER V

INPUT TAX CREDIT

16. Eligibility and conditions for taking input tax credit

(1) Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and within the time and manner specified in section 44, be entitled to take credit of input tax charged on any supply of goods or services to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person:

PROVIDED that credit of input tax in respect of pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto shall not exceed—

(a) one-third of the total input tax in the financial year in which the said goods are received,

(b) two-third of the total input tax, including the credit availed in the first financial year, in the financial year immediately succeeding the year referred to in clause (a) in which the said goods are received, and

(c) the balance of the amount of credit in any subsequent financial year.

(2) Notwithstanding anything contained in this section, but subject to the provisions of section 36, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying document(s) as may be prescribed;

(b) he has received the goods and/or services;

(c) the tax charged in respect of such supply has been actually paid to the account of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 34:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to take credit upon receipt of the last lot or installment:

PROVIDED FURTHER that where a **recipient fails to pay to the supplier of services**, the amount towards the value of supply of services along with tax payable thereon within a period of **three months** from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in the manner as may be prescribed.

Explanation.—For the purpose of clause (b), it shall be deemed that the taxable person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such taxable person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise.

(3) Where the registered taxable person has claimed **depreciation** on the tax component of the cost of **capital goods** under the provisions of the Income Tax Act, 1961(43 of 1961), the input tax credit shall not be allowed on the said tax component.

(4) A taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services after furnishing of the return under section 34 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Author comments: From section 16 (1) it appears that only a registered taxable person can avail the credit of input tax and Un-registered person may not be eligible to avail the credit of input tax.

Telecom

In the current indirect tax regime, CENVAT credit on **telecommunication** towers was being denied to the telecommunication companies. In GST regime input tax credit of telecommunication tower will be available (though in installments) to telcom companies.

Three months condition

As regards availment of credit of GST paid to service vendor the revised draft provides that in case the taxpayers does not pay to his service vendor, **within three months from date of invoice then the GST credit will be reversed**.

Time limit for availment

GST Act also provides for time limit for availing credit (typically one year from the date of issue of invoice or even less!).

As per section 16 (2) of the Act, there are, *inter-alia*, two conditions for availing credit is that the vendor should have made payment of GST as well as filed returns. Typically, once invoice is issued by a supplier under applicable tax reflected on it, then the recipient should not be burdened with the responsibility of knowing whether the tax has actually been credited to the Government or not. Putting such a kind of onerous condition on buyer leads to un-necessary burden and may pave way of litigation.

17. Apportionment of credit and blocked credits

(1) Where the goods and/or services are used by the registered taxable person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods and / or services are used by the registered taxable person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act, 2016 and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Explanation.- For the purposes of this sub-section, exempt supplies shall include supplies on which recipient is liable to pay tax on reverse charge basis under subsection (3) of section 8.

(3) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month.

Explanation.- The option once exercised shall not be withdrawn during the remaining part of the financial year.

(4) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1), (2), (3) and (4) of section 18, input tax credit shall not be available in respect of the following:

(a) motor vehicles and other conveyances except when they are used

(i) for making the following taxable supplies, namely

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods.

(b) supply of goods and services, namely,

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such inward supply of goods or services of a particular category is used by a registered taxable person for making an outward taxable supply of the same category of goods or services;

(ii) membership of a club, health and fitness centre,

(iii) rent-a-cab, life insurance, health insurance except where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession.

(c) works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service;

(d) goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business;

Explanation 1.- For the purpose of this clause, the word "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Explanation 2.- 'Plant and Machinery' means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures.

(e) goods and/or services on which tax has been paid under section 9;

(f) goods and/or services used for personal consumption;

(g) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(h) any tax paid in terms of sections 67, 89 or 90.

(5) The Central or a State Government may, by notification issued in this behalf, prescribe the manner in which the credit referred to in sub-sections (1) and (2) above may be attributed.

Author comments:

If goods and/or services used for

a. Partly for supplying taxable and partly supplying non- taxable supplies or

b. Partly for business use and partly for non-business use

then credit to the extent of use for taxable or business supplies will be available.

Banking

Special provision for **banking company**, financial institution including NBFC for availing credits are introduced where they can avail credit of 50% on inputs, input services and capital goods.

Negative list of credits

Currently, CENVAT Credit regime disallows CENVAT Credit on various services such as motor vehicle related services, catering services, employee insurance, construction of civil structure etc. Similarly, State VAT laws restrict input tax credit in respect of construction, motor vehicle etc. Current, this denial of credits leads to un-necessary cost burden on assessee. It was expected that in GST regime, seamless credit will be allowed to business houses without any denial or any restrictions except say goods / services which are availed for personal use than official use (something similar to Unite Kingdom VAT law).

However, surprisingly, inter-alia, aforesaid credit would continue to be not available (in respect of both, goods or services). Further, credit is proposed to be denied on goods and/or services used for private or personal consumption, to the extent they are so consumed. This continuation of denial will lead to substantial tax cascading (as rate of GST will be higher than the current rate of service tax!).

18. Availability of credit in special circumstances

(1) A person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

(2) A person, who takes registration under sub-section (3) of section 23 shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration.

(3) Where any registered taxable person ceases to pay tax under section 9, he shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 8:

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf

(4) Where an exempt supply of goods or services by a registered taxable person becomes a taxable supply, such person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf.

(5) A taxable person shall not be entitled to take input tax credit under sub-section (1), (2), (3) or (4), as the case may be, in respect of any supply of goods and / or services to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(6) Where there is a change in the constitution of a registered taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said registered taxable person shall be allowed to transfer the input tax credit that remains unutilized in its books of accounts to such sold, merged, demerged, amalgamated, leased or transferred business in the manner prescribed.

(7) Where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 9 or, where the goods and / or services supplied by him become exempt absolutely under section 11, he shall pay an amount, by way of debit in the electronic credit or cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of such switch over or, as the case may be, the date of such exemption:

PROVIDED that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(8) The amount payable under sub-section (7) shall be calculated in such manner as may be prescribed.

(9) The amount of credit under sub-section (1), (2), (3) and (4) shall be calculated in such manner as may be prescribed.

(10) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods or plant and machinery under sub-section (1) of section 15, whichever is higher:

PROVIDED FURTHER that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods under sub-section (1) of section 15.

19. Recovery of Input Tax Credit and Interest thereon

Where credit has been taken wrongly, the same shall be recovered from the registered taxable person in accordance with the provisions of this Act.

20. Taking input tax credit in respect of inputs sent for job work

(1) The "principal" referred to in section 55 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 their 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 (b) of sub-section (1) of section 55 within a period of **one year** of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out:

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 their 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 their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

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.

Author comments: Job work provisions are prescribed at section 20 and 55 of the GST Act. As per section 20, "principal" (typically a person who is

sending the goods for job-work) shall, be entitled to take credit of input tax on inputs sent to a job-worker for job-work if the said inputs.
In case they are not received back within **one year** days then deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out. For capital goods (other than moulds and dies, jigs and fixtures, or tools) the time limit will be three years.

21. Manner of distribution of credit by Input Service Distributor

(1) The Input Service Distributor shall distribute, in such manner as may be prescribed, the credit of CGST as CGST or IGST and IGST as IGST or CGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit are located in different States.

(CGST ACT)

(1) The Input Service Distributor shall distribute, in such manner as may be prescribed, the credit of SGST as SGST or IGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit are located in different States.

(SGST Act)

(2) The Input Service Distributor shall distribute, in such manner as may be prescribed, the credit of CGST and IGST as CGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit, being a business vertical, are located in the same State.

(CGST Act)

(2) The Input Service Distributor shall distribute, in such manner as may be prescribed, the credit of SGST and IGST as SGST, by way of issue of a prescribed document containing, inter alia, the amount of input

tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit, being a business vertical, are located in the same State.

(SGST Act)

(3) The Input Service Distributor may distribute the credit subject to the following conditions, namely:

(a) the credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such document shall contain details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed only amongst such recipient(s) to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation 1. –For the purposes of this section, the "relevant period" shall be-

(a) if the recipients of the credit have turnover in their States in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(b) if some or all recipients of the credit do not have any turnover in their States in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

Explanation 2. - For the purposes of this section, 'recipient of credit' means the supplier of goods and / or services having the same PAN as that of Input Service Distributor.

Explanation 3. – For the purposes of this section, 'turnover' means aggregate value of turnover, as defined under sub-section (6) of section 2.

Author comments: As per section 2 (54) of the GST Act, "Input Service Distributor" means an office of the supplier of goods and / or services which receives tax invoices issued under section 28 towards receipt of input services and issues tax invoice or such other document as prescribed for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above. Thus, it appears that only credit on 'input services' can be distributed (and not on inputs or capital goods).

This will be a new concept for assesses who are currently not registered as input service distributor. Further, this facility is optional in nature. As per the report of Joint Committee on *'Business Process For GST on GST Return'* input service distributor has to file the return monthly basis (in the format GSTR-6).

22. Manner of recovery of credit distributed in excess

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 21 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such

recipient(s) along with interest, and the provisions of section 66 or 67, as the case may be, shall apply *mutatis mutandis* for effecting such recovery.

Author comments: This section provides for recovery in cases where the credit is wrongly distributed.

CHAPTER - VI
REGISTRATION

23. Registration

(1) Every person who is liable to be registered under Schedule V of this Act shall apply for registration in every such State in which he is so liable within **thirty days** from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

PROVIDED that a casual taxable person or a non-resident taxable person shall apply for registration at least **five days** prior to the commencement of business.

(2) Notwithstanding anything contained in sub-section (1), a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered under Schedule V, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

(4) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration under sub-section (1), (2) or (3):

PROVIDED that a person required to deduct tax under section 46 shall have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number (TAN) issued under the said Act in order to be eligible for grant of registration.

(5) Notwithstanding anything contained in sub-section (4), a non-resident taxable person may be granted registration under sub-section (1) on the basis of any other document as may be prescribed.

(6) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action that is, or may be taken under this Act, or under any other law for the time being in force, proceed to register such person in the manner as may be prescribed.

(7) Notwithstanding anything contained in sub-section (1),

(a) any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries shall be granted a Unique Identity Number; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall obtain a Unique Identity Number,

in the manner prescribed, for the purpose(s) notified, including refund of taxes on the notified supplies of goods and/or services received by them.

(8) The registration or the Unique Identity Number, shall be granted or, as the case may be, rejected after due verification in the manner and within such period as may be prescribed.

(9) A certificate of registration shall be issued in the prescribed form, with effective date as may be prescribed.

(10) A registration or an Unique Identity Number shall be deemed to have been granted after the period prescribed under sub-section (8), if no deficiency has been communicated to the applicant by the proper officer within that period.

(11) Notwithstanding anything contained in sub-section (8), any rejection of application for registration or the Unique Identity Number under the CGST Act / SGST Act shall be deemed to be a

rejection of application for registration under the SGST Act / CGST Act.

(12) The grant of registration or the Unique Identity Number under the CGST Act / SGST Act shall be deemed to be a grant of registration or the Unique Identity Number under the SGST/CGST Act provided that the application for registration or the Unique Identity Number has not been rejected under SGST/CGST Act within the time specified in sub-section (8).

(13) The Central or a State Government may, on the recommendation of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Author comments: Every person who is liable to be registered under Schedule V of this Act is required to apply for registration in **every such State** in which he is so liable **within thirty days** from the date on which he becomes liable to registration. Casual/ non-residents should apply at-least five days before their commencement of business.

Registration number in GST will be PAN based and hence, having PAN would be a pre-requisite for obtaining registration. Further, as registration under GST will be State-wise, thus the assesse will have to obtain separate registration for each State. Further, the GST law provides for an option to obtain separate registration for each of the 'business vertical' in the same State.

24. Special provisions relating to casual taxable person and non-resident taxable person

(1) The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for a period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration:

PROVIDED that the proper officer may, at the request of the said taxable person, extend the aforesaid period of ninety days by a further period not exceeding ninety days.

(2) Notwithstanding anything to the contrary contained in this Act, a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 23, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

PROVIDED that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

(3) The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilized in the manner provided under section 44 .

Author comments: Section 24 prescribes special provisions relating to casual taxable person and non-resident taxable person. As per the provisions, a person may obtain a temporary registration for a period of 90 days (extendable for additional 90 days). A person who obtains registration in accordance with this section, will be required to make advance deposit of GST (based on his estimated tax liability).

25. Amendment of registration

(1) Every registered taxable person and a person to whom a unique identity number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration, or that furnished subsequently, in the manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject

amendments in the registration particulars in the manner and within such period as may be prescribed:

PROVIDED that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.

(3) The proper officer shall not reject the request for amendment in the registration particulars without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) Any rejection or, as the case may be, approval of amendments under the CGST Act/SGST Act shall be deemed to be a rejection or approval of amendments under the SGST Act/CGST Act.

Author comments: This section deals with amendment in registration certificate in case any information furnished at the time of registration has subsequently undergone any change.

26. Cancellation of registration

(1) The proper officer may, either on his own motion or on an application filed, in the prescribed manner, by the registered taxable person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, -

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person, other than the person registered under sub-section (3) of section 23, is no longer liable to be registered under Schedule V .

(2) The proper officer may, in the manner as may be prescribed, cancel the registration of taxable person from such date, **including any anterior date**, as he may deem fit, where, -

(a) the registered taxable person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 9 has not furnished returns for three consecutive tax periods; or

(c) any taxable person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 23 has not commenced business within six months from the date of registration.

(3) Where any registration has been obtained by means of fraud, wilful misstatement or suppression of facts, the proper officer may cancel the registration with retrospective effect, subject to the provisions of section 37.

(4) The proper officer shall not cancel the registration without giving a notice to show cause and without giving the person a reasonable opportunity of being heard:

PROVIDED that such notice may not be issued where an application is filed by the registered taxable person or his legal heirs, in the case of death of such person, for cancellation of registration.

(5) The cancellation of registration under this section shall not affect the liability of the taxable person to pay tax and other dues under the Act or to discharge any obligation under the Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(6) The cancellation of registration under the CGST Act/SGST Act shall be deemed to be a cancellation of registration under the SGST Act/CGST Act.

(7) Every registered taxable person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit or cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semifinished or finished goods held in stock on the day immediately preceding the date of such cancellation or

the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

PROVIDED that in case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the percentage points as may be prescribed in this behalf or the tax on the transaction value of such capital goods under sub-section (1) of section 15, whichever is higher.

(8) The amount payable under sub-section (7) shall be calculated in such manner as may be prescribed.

Author comments: This section deals with cancellation of registration certificate. The registration certificate may be cancelled by the Authorities on their own motion or basis the application filed by the assessee/ his heirs.

Surprisingly, as per section 21 (2) registration certificate can even be cancelled **retrospectively** (!). If this enabling power is exercised by the Authorities then it may lead to denial of credits to the bona-fide buyers.

27. Revocation of cancellation of registration

(1) Subject to such conditions and in such manner as may be prescribed, any registered taxable person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(2) The proper officer may, in the manner and within such period as may be prescribed in this behalf, by way of an order, either revoke cancellation of the registration or reject the application for revocation for good and sufficient reasons.

(3) The proper officer shall not reject the application for revocation of cancellation of registration without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) Revocation of cancellation of registration under the CGST Act / SGST Act shall be deemed to be a revocation of cancellation of registration under the SGST Act / CGST Act.

Author comments: This section will be applicable **only** in the cases in which registration is cancelled by Officer on his own motion and not when registration was cancelled after filing of application. It is provided that if the cancellation registration of registration is revoked than it will be deemed that the cancellation is revoked under both the acts i.e. CGST and SGST.

CHAPTER- VII

TAX INVOICE, CREDIT AND DEBIT NOTES

28. Tax invoice

(1) A registered taxable person supplying taxable goods shall, before or at the time of,-

(a) removal of goods for supply to the recipient, where the supply involves movement of goods, or

(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

PROVIDED that the Central/State Government may, on the recommendation of the Council, by notification, specify the categories of goods and/or supplies in respect of which the tax invoice shall be issued within such time as may be prescribed.

(2) A registered taxable person supplying taxable services shall, before or after the provision of service but within a period prescribed in this behalf, issue a tax invoice, showing the

description, value, the tax payable thereon and such other particulars as may be prescribed:

PROVIDED that the Central/State Government may, on the recommendation of the Council, by notification, specify the categories of services in respect of which any other document issued in relation to the supply shall be deemed to be a tax invoice, subject to such conditions and limitations as may be prescribed. (3) Notwithstanding anything contained in sub-sections (1) and (2):

(a) a registered taxable person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period starting from the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered taxable person supplying exempted goods and/or services or paying tax under the provisions of section 9 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

PROVIDED that the registered taxable person may not issue a bill of supply if the value of the goods or services supplied is less than one hundred rupees except where the recipient of the goods or services requires such bill.

(c) a registered taxable person shall, on receipt of advance payment with respect to any supply of goods or services by him, issue a receipt voucher or any other document, including therein such particulars as may be prescribed, evidencing receipt of such payment;

(d) a registered taxable person who is liable to pay tax under sub-section (3) of section 8 shall issue an invoice in respect of goods or services received by him on the date of receipt of goods or services from a person who is not registered under the Act.

(4) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be

issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

(5) In case of continuous supply of services,

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued before or after the payment is liable to be made by the recipient but within a period prescribed in this behalf whether or not any payment has been received by the supplier of the service;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or after each such time when the supplier of service receives the payment but within a period prescribed in this behalf;

(c) where the payment is linked to the completion of an event, the invoice shall be issued before or after the time of completion of that event but within a period prescribed in this behalf.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply effected before such cessation.

(7) For the purposes of sub section (4) and (5), the Central or a State Government may on the recommendation of the Council, specify, by notification, the supply of goods or services that shall be treated as continuous supply of goods or services.

(8) Notwithstanding anything contained in sub-section (1), where the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the invoice shall be issued before or at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.

Explanation.- The expression "tax invoice" shall be deemed to include a document issued by an Input Service Distributor under section 21,

and shall also include any revised invoice issued by the supplier in respect of a supply made earlier.

Author comments: This section prescribes when invoice should be issued and particulars to be mentioned on the invoice such as description, quantity, value, amount of tax and such other particulars as may be prescribed in due course.

29. Tax not to be collected by unregistered taxable person

A person who is not a registered taxable person shall not collect in respect of any supply of goods and/or services any amount by way of tax under the CGST/SGST Act and no registered taxable person shall make any such collection except in accordance with the provisions of this Act and the rules made thereunder.

30. Amount of tax to be indicated in tax invoice and other documents

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which will form part of the price at which such supply is made.

Author comments: This section makes it mandatory to prominently indicate the GST amount on tax invoices or like document.

31. Credit and debit notes

(1) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to exceed the taxable value and/or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where services supplied are found to be deficient, the registered taxable person, who has supplied such goods and/or

services, may issue to the recipient a credit note containing such particulars as may be prescribed.

(2) Any registered taxable person who issues a credit note in relation to a supply of goods and/or services shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in the manner specified in this Act:

PROVIDED that no reduction in output tax liability of the supplier shall be permitted if the incidence of tax and interest on such supply has been passed on to any other person.

(3) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to be less than the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, shall issue to the recipient a debit note containing such particulars as may be prescribed.

Explanation: - 'Debit Note' shall include a supplementary invoice.

(4) Any registered taxable person who issues a debit note in relation to a supply of goods and/or services shall declare the details of such debit note, in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in the manner specified in this Act.

Author comments: In GST regime the adjustment (excess or short) in value and tax payable thereon will be possible through debit or credit notes only.

CHAPTER- VIII

RETURNS

32. Furnishing details of outward supplies

(1) Every registered taxable person, other than an input service distributor, a nonresident taxable person and a person paying tax under the provisions of section 9, section 46 or section 56, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services effected, during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within the time and in the manner as may be prescribed:

PROVIDED that the Commissioner may, for valid and sufficient reasons, by notification, for such class of taxable persons as may be specified therein, extend the time limit for furnishing such details:

PROVIDED FURTHER that any extension of time limit approved by the Commissioner of [Central / State] Goods and Services Tax shall be deemed to be approved by the Commissioner of [State/Central] Goods and Services Tax.

Explanation.- For the purposes of this section, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

(2) Every registered taxable person who has been communicated the details under sub-section (3) of section 33 or the details pertaining to inward supplies of input service distributor under sub-section (4) of section 333, shall either accept or reject the details so communicated, on or before the seventeenth day of the month succeeding the tax period and the details furnished by him under subsection (1) shall stand amended accordingly.

(3) Any registered taxable person, who has furnished the details under sub-section (1) for any tax period and which have remained

unmatched under section 37 or section 38, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

PROVIDED that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 34 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Author comments: Every registered taxable person will be required to furnish, electronically (in GSTR-1 format), the details of outward supplies of goods and/or services effected, during a tax period on or before the 10th day of the month succeeding month. Thus, all the GST assessee throughout India will upload the details of outward supplies by 10th of subsequent month.

33. Furnishing details of inward supplies

(1) Every registered taxable person, other than an input service distributor or a nonresident taxable person or a person paying tax under section 9, section 46 or section 56, shall verify, validate, modify or, if required, delete the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 32 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 32.

(2) Every registered taxable person, other than an input service distributor or a nonresident taxable person or a person paying tax under the provisions of section 9, section 46 or section 56 , shall

furnish, electronically, the details of inward supplies of taxable goods and/or services, including inward supplies of goods or services on which the tax is payable on reverse charge basis under this Act and inward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes received in respect of such supplies during a tax period after the tenth but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

PROVIDED that the Commissioner may, for valid and sufficient reasons, by notification, for such class of taxable persons as may be specified therein, extend the time limit for furnishing such details:

PROVIDED FURTHER that any extension of time limit approved by the Commissioner of [Central/State] Goods and Services Tax shall be deemed to be approved by the Commissioner of [State/Central] Goods and Services Tax.

(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in the manner and within the time as may be prescribed.

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-sections (2) or (4) of section 34 shall be communicated to the supplier concerned in the manner and within the time as may be prescribed.

(5) Any registered taxable person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 37 or section 38, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

PROVIDED that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 34 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Author comments: Every registered taxable person will be required to verify/modify, electronically (in GSTR-2 format), the details of inward supplies of goods and/or services, during a tax period on or before the 15th day of the month succeeding month. The details of inward supplies will be auto-populated based on GSTR-1 filed by the vendors. Effectively, all the GST assessee will have to reconcile the procurement details with vendors on monthly. This concept of credit availment appears to be heavily borrowed from Maharashtra VAT provisions (forms J1 and J2).

34. Returns

(1) Every registered taxable person, other than an input service distributor or a nonresident taxable person or a person paying tax under the provisions of section 9, section 46 or section 56 shall, for every calendar month or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered taxable person paying tax under the provisions of section 9 shall, for each quarter or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, of inward supplies of goods or services, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered taxable person required to deduct tax at source under the provisions of section 46 shall furnish, in such form and in

such manner as may be prescribed, a return, electronically, for the month in which such deductions have been made along with the payment of tax so deducted within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the validity period of registration, whichever is earlier.

(6) The Commissioner of [CGST/SGST] may, for valid and sufficient reasons, by notification, for such class of taxable persons as may be specified therein, extend the time limit for furnishing the returns under sub-section (1), (2), (3), (4) or, as the case may be, under sub-section (5):

PROVIDED that any extension of time limit approved by the Commissioner of [CGST / SGST] shall be deemed to be approved by the Commissioner of [SGST/ CGST].

(7) Every registered taxable person, who is required to furnish a return under subsection (1), (2), (3) or, as the case may be, under sub-section (5) shall pay to the account of the appropriate Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered taxable person who is required to furnish a return under subsection (1), or as the case may be, under sub-section (2), shall furnish a return for every tax period whether or not any supplies of goods or services have been effected during such tax period.

(9) Subject to the provisions of sections 32 and 33, if any taxable person after furnishing a return under sub-section (1), (2) or, as the case

may be, under subsection (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter, as the case may be, during which such omission or incorrect particulars are noticed, subject to payment of interest, where applicable and as specified in the Act:

PROVIDED that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter, as the case may be, following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

Author comments: Every registered taxable person will be required, to file a monthly return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within 20 days after the end of such month.

Composition dealer (registered in accordance with section 9 of GST Act) will be required to filed a quarterly return before 18th from the end of quarter.

An Input Service Distributor will be required to file a monthly return with 13 days from end of the month.

35. First Return

Every registered taxable person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return filed by him after grant of registration.

36. Claim of input tax credit and provisional acceptance thereof

(1) Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax, as selfassessed in his return and such amount

shall be credited, on a provisional basis, to his electronic credit ledger to be maintained in the manner as may be prescribed.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of selfassessed output tax liability as per the return referred to in sub-section (1).

Author comments: Every taxable person will be entitled to take credit of input tax, as self-assessed, in his return and such amount shall be credited, on a provisional basis, to his electronic credit ledger to be maintained in the manner as may be prescribed.

37. Matching, reversal and reclaim of input tax credit

(1) The details of every inward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched-

(a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,

(b) with the additional duty of customs paid under section 3 of the Customs Tariff

Act, 1975 (51 of 1975) in respect of goods imported by

him, and

(c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices and/or debit notes relating to inward supply that match with the details of corresponding outward supply or with the additional duty of customs paid shall, subject to the provisions of section 16 or 17, as the case may be, be finally accepted and such acceptance shall be communicated, in the manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the

same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in the manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in the manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under subsection (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the supplier declares the details of the invoice and/or debit note in his valid return within the time specified in sub-section (9) of section 34.

(8) A recipient in whose output tax liability any amount has been added under subsection (5) or, as the case may be, under sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 45 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in the manner as may be prescribed:

PROVIDED that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 45.

Author comments: This section provides for matching of details of outward supplies and inward supplies. This section also provides that in case of mis-match of details the discrepancies will be communicated with the both the buyer and supplier to enable then take the corrective actions.

38. Matching, reversal and reclaim of reduction in output tax liability

(1) The details of every credit note relating to outward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'supplier') for a tax period shall, in the manner and within the time prescribed, be matched

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(a) with the corresponding reduction in the claim for input tax credit by the corresponding taxable person (hereinafter referred to in this section as the 'recipient') in his valid return for the same tax period or any subsequent tax period, and

(b) for duplication of claims for reduction in output tax liability.

(2) The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in the manner as may be prescribed, to the supplier.

(3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid

returns, the discrepancy shall be communicated to both such persons in the manner as may be prescribed.

(4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in the manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under subsection (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.

(7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 34.

(8) A supplier in whose output tax liability any amount has been added under subsection (5) or, as the case may be, under sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 45 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by crediting the amount in the corresponding head of his electronic cash ledger in the manner as may be prescribed:

PROVIDED that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the recipient.

(10) The amount reduced from output tax liability in contravention of the provision of sub-section (7) shall be added to the output tax liability of

the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 45.

39. Annual return

(1) Every registered taxable person, other than an input service distributor, a person paying tax under section 46 or section 56, a casual taxable person and a nonresident taxable person, shall furnish an annual return for every financial year electronically in such form and in such manner as may be prescribed on or before the thirty first day of December following the end of such financial year.

(2) Every registered taxable person who is required to get his accounts audited under sub-section (4) of section 53 shall furnish, electronically, the annual return under sub-section (1) along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the year with the audited annual financial statement, and such other particulars as may be prescribed.

Author comments: This section prescribes that every registered taxable person, (a person paying tax under section 46 or section 56, a casual taxable person and a non-resident taxable person), will be required to furnish an annual return for every financial year electronically on or before the 31st December following the end of such financial year.

40. Final return

Every registered taxable person who applies for cancellation of registration shall furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later, in such form and in such manner as may be prescribed.

Author comments: This return is applicable for a taxable person who applies for cancellation of registration certificate.

41. Notice to return defaulters

Where a registered taxable person fails to furnish a return under section 34, section 39 or section 40, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

42. Levy of late fee

(1) Any registered taxable person who fails to furnish the details of outward or inward supplies required under section 32 or section 33, as the case may be, or returns required under section 34 or section 40 by the due date shall be liable to pay late fee of one hundred rupees for every day during which such failure continues subject to a maximum of five thousand rupees.

(2) Any registered taxable person who fails to furnish the return required under section 39 by the due date shall be liable to a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent of his turnover in the State.

43. Tax Return Preparers

(1) The appropriate Government may, by rules, prescribe the manner of approval of Tax Return Preparers, their eligibility conditions, duties and obligations, manner of removal and such other conditions as may be relevant for their functioning as a Tax Return Preparer.

(2) A registered taxable person may, in the manner prescribed, authorise an approved Tax Return Preparer to furnish the details of outward supplies under section 32, the details of inward supplies under section 33 and the return under section 34, 39 or section 40, as the case may be, and such other tasks as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the

return and/or other details filed by the Tax Return Preparer shall continue to rest with the registered taxable person on whose behalf such return and details are filed.

CHAPTER-IX

PAYMENT OF TAX

44. Payment of tax, interest, penalty and other amounts

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by internet banking or by using credit/debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by any other mode, subject to such conditions and restrictions as may be prescribed in this behalf, shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

Explanation.- The date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit in the electronic cash ledger.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger, in accordance with section 36**,** to be maintained in the manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax payable under the provisions of the Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(5) (a) The amount of input tax credit on account of IGST available in the electronic credit ledger shall first be utilized towards payment of

IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.

(b) The amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The input tax credit on account of CGST shall not be utilized towards payment of SGST.

{CGST Act}

(b) The amount of input tax credit on account of SGST available in the electronic credit ledger shall first be utilized towards payment of SGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The input tax credit on account of SGST shall not be utilized towards payment of CGST.

{SGST Act}

(6) The balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the rules made thereunder may be refunded in accordance with the provisions of section 48 and the amount collected as CGST/SGST shall stand reduced to that extent.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order:

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to return of current tax period;

(c) any other amount payable under the Act or the rules made thereunder including the demand determined under section 66 or 67.

(9) Every person who has paid the tax on goods and/or services under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods and/or services.

Explanation. 1— For the purposes of this section, the expression "tax dues" means the tax payable under this Act and does not include interest, fee and penalty.

Explanation. 2- For the purposes of this section, the expression "other dues" means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.

Author comments:

This section provides for payment of tax, interest, penalty and other amounts (such as late fees for delayed return). In this regard, section provides for mechanism to pay the liability through cash and credit.

Electronic cash ledger

The amount available in the electronic cash ledger may be used for making any payment towards:

a. Tax

b. Interest

c. Penalty

d. Fees or any other amount payable under the provisions of the Act or rules

Electronic credit ledger

The amount available in the electronic cash ledger may be used for making any payment towards tax. The manner of utilisation of credit for tax payment is provided as under:

Credit of	**Utilisation**
IGST	First against IGST then against CGST and later against SGST
CGST	First against CGST then against IGST

SGST	First against SGST then against IGST

Further the every taxable person shall discharge his tax and other dues in the order given bellow.

1. Self-assessed tax, and other dues related **previous** periods;
2. Self-assessed tax, and other dues related **current** period;
3. Any other amount including the demand determined under section 66 or 67

45. Interest on delayed payment of tax

(1) Every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate as may be notified, on the recommendation of the Council, by the Central or a State Government.

(2) The interest under sub-section (1) shall be calculated from the first day on which such tax was due to be paid.

(3) In case a taxable person makes an undue or excess claim of input tax credit under sub-section (10) of section 37 or undue or excess reduction in output tax liability under sub-section (10) of section 38, he shall be liable to pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at the prescribed rate for the period computed in the manner prescribed.

Author comments: This section provides for interest in case an assessee fails to pay the tax or any part thereof to the account. The rate of interest will be prescribed by the Centre and State Government on recommendation of GST Council.

Also, if the Person makes an undue or excess claim of the input tax credit and undue and excess reduction in the output tax liability shall be liable to pay interest at the specified rate.

46. Tax deduction at source

(1) Notwithstanding anything contained to the contrary in this Act, the Central or a State Government may mandate, -

(a) a department or establishment of the Central or State Government, or

(b) Local authority, or

(c) Governmental agencies, or

(d) such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council,

[hereinafter referred to in this section as **"**the deductor**"**], to deduct tax at the rate of **one percent** from the payment made or credited to the supplier [hereinafter referred to in this section as **"**the deductee**"**] of taxable goods and/or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, **exceeds five lakh rupees**.

Explanation. – For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the tax indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the account of the appropriate Government by the deductor within ten days after the end of the month in which such deduction is made, in the manner prescribed.

(3) The deductor shall, in the manner prescribed, furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed in this behalf.

(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the appropriate Government, the deductor shall be liable to pay, by way of a late fee, a sum of one hundred rupees per

day from the day after the expiry of the five day period until the failure is rectified:

PROVIDED that the amount of fee payable under this sub-section shall not exceed five thousand rupees.

(5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 34, in the manner prescribed.

(6) If any deductor fails to pay to the account of the appropriate Government the amount deducted as tax under sub-section (1), he shall be liable to pay interest in accordance with the provisions of sub-section (1) of section 45, in addition to the amount of tax deducted.

(7) Determination of the amount in default under this section shall be made in the manner specified in section 66 or 67, as the case may be.

(8) Refund to the deductor or the deductee, as the case may be, arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 48:

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

Author comments: This section deals with Tax Deduction at Source. The rate specified is 1%. The liability to deduct TDS will trigger in cases where total value of supply exceeds Rs 5 lakhs. The amount deducted is required to be deposited within 10 days of after the end of the month. Deductor is liable to pay penalty of Rs 100/- per day if the certificate of the tax deduction is not issued within 5 days from the date of payment. Detuctee can claim the credit of TDS.

CHAPTER-X

TRANSFER OF INPUT TAX CREDIT

47. Transfer of input tax credit

On utilization of input tax credit availed under the CGST Act for payment of tax dues under the IGST Act as per sub-section **Error! Reference source not found.** of section 44, the amount collected as CGST shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the CGST account to the IGST account in the manner and time as may be prescribed.

CGST Act

On utilization of input tax credit availed under the SGST Act for payment of tax dues under the IGST Act as per sub-section **Error! Reference source not found.** of section 44, the amount collected as SGST shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the Central Government and the State Government shall transfer an amount equal to the amount so apportioned to the IGST account in the manner and time as may be prescribed.

SGST Act

CHAPTER XI

REFUNDS

48. Refund of tax

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application in that regard to the proper officer of IGST/CGST/SGST before the **expiry of two years** from the relevant date in such form and in such manner as may be prescribed:

PROVIDED that a registered taxable person, claiming refund of any balance in the electronic cash ledger as per sub-section (6) of section 44, may claim such refund in the return furnished under section 34 in such manner as may be prescribed.

(2) A specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons as notified under section 49, entitled to a refund of IGST/CGST/SGST paid by it/him on inward supplies of goods and/or services, may make an application for such refund to the proper officer, in the form and manner prescribed, before the expiry of sixth months from the last day of the month in which such supply was received.

(3) Subject to the provisions of sub-section (10), a taxable person may claim refund of any unutilized input tax credit at the end of any tax period:

PROVIDED that **no refund of unutilized input tax credit shall be allowed in cases other than exports including zero rated supplies or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil rated or fully exempt supplies**:

PROVIDED FURTHER that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to **export duty:**

PROVIDED ALSO that no refund of input tax credit shall be allowed if the supplier of goods or services claims refund of output tax paid under the IGST Act, 2016.

(4) 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 30) as the applicant may furnish to establish that 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:

PROVIDED that where the amount claimed as refund is **less than five lac rupees**, it shall **not be necessary for the applicant to furnish any documentary and other evidences** and **instead**, he may **file a declaration**, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or 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 Fund.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of export of goods and/or services made by registered taxable persons, other than such category of registered taxable persons as may be notified in this behalf, **refund on a provisional basis, ninety percent**. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in the manner and subject to such conditions,

limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the **order** under sub-section (5) **within sixty days** from the date of receipt of application.

Explanation.- The "application" for the purpose of this sub-section shall mean complete application containing all information as may be prescribed.

(8) Notwithstanding anything contained in sub-section (5) or sub-section (6), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

(a) refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India;

(b) refund of unutilized input tax credit under sub-section (3);

(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 70 ;

(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 Central or a State Government may, on the recommendation of the Council, by notification, specify.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision 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 as provided in sub-section (8).

(10) Notwithstanding anything contained in sub-section (3), where any refund is due under the said sub-section to a registered taxable 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 the Act or under any earlier law.

Explanation.- For the purposes of this sub-section, the expression "specified date" shall mean—

(a) the last date for filing an appeal under this Act, in a case where no appeal has been filed**;** or

(b) thirty days from the date of filing an appeal under this Act, in a case where an appeal has been filed.

(11) Notwithstanding anything contained in sub-section (5) or sub-section (6), where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding 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 proceeding 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.

(12) Where a refund is withheld under sub-section (11), the taxable person shall be entitled to interest as provided under section 50, if as a result of the appeal or further proceeding he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 24 shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him

had remained in force, furnished all the returns required under section 34.

(14) Notwithstanding anything contained in this section, no refund under subse`ction (5) or sub-section (6) shall be paid to an applicant if the amount is less than one thousand rupees.

Explanation. — For the purposes of this section -

1. "refund" includes refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3)

   .

2. "**relevant date**" means –

(a) in the case of **goods exported** out of India where a refund of tax paid is available in respect of the goods themselves or, as the case may be, the inputs or input services used in such goods, -

   (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

   (ii) if the goods are exported by land, the date on which such goods pass the frontier, or

   (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as **deemed exports** where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is filed;

(c) in the case of **services exported** out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -

(i) receipt of payment in convertible foreign exchange, where the supply of service had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilized input tax credit under sub-section (3) , the end of the financial year in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services by such person; and

(h) in any other case, the date of payment of tax.

Author comments: Section 48 deals with refunds. The section provides that the refund is permissible in following cases:

a. Exports (Including Zero rate supply) or
b. Credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs.

The time limit prescribed for claiming refund is **two years** from relevant date. The meaning of **relevant date** is provided at Explanation to section 38 (11) (B). Typically for goods the 'relevant date' will be the date on which goods leave India and for services it will be receipt of payment (where payment is received after completion of service) or date of issue of invoice (where payment is received in advance).

Section 38 (4A) provides that **90%** of the refund claim will be processed on provisional basis and balance will be given after verification. The proper

officer shall issue the order within **60 days** from the receipt of the application.

49. Refund in certain cases

The Central/State Government may, on the recommendation of the Council, by notification, specify any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and 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 supplies of goods or services received by them.

Author comments: This section gives the power to Central or state government to notify on the recommendation of the council any other person or class of persons who is entitled to claim the refund of taxes paid.

50. Interest on delayed refunds

If any tax ordered to be refunded under section 48 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate as may be specified in the notification issued by the Central or a State Government on the recommendation of the Council shall be payable in respect of such refund from the date immediately after the expiry of **sixty days** from the date of receipt of application under the said sub-section till the date of refund of such tax.

Explanation.- Where any order of refund is made by an Appellate Authority, Tribunal or any Court against an order of the proper officer under sub-section (5) of section 48, the order passed by the Appellate Authority, Tribunal or, as the case may be, by the Court shall be

deemed to be an order passed under the said sub-section (5) for the purposes of this section.

Author comments: This section provides that in case there is any delay in processing of refund claim of an assessee for than 60 days from date of receipt of application then the assessee will be entitled to interest on such delay.

51. Consumer Welfare Fund

(1) There shall be established by the Central or a State Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed, -

(a) the amount of tax referred to in sub-section (5) or sub-section (6) of section 48 ; and

(b) any income earned from investment of the amount credited to the Fund and any other monies received by the Central or a State Government for the purposes of this Fund.

52. Utilization of the Fund

(1) Any money credited to the Fund shall be utilised by the Central/State Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.

(2) The Central/State Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

CHAPTER XII

ACCOUNTS AND RECORDS

53. Accounts and other records

(1) Every registered taxable person shall keep and maintain, **at his principal place of business**, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf:

PROVIDED that where more than one place of business is specified in the certificate of registration, the accounts relating to **each place of business** shall be kept at such places of business concerned:

PROVIDED FURTHER that the registered taxable person may keep and maintain such accounts and other particulars in the electronic form in the manner as may be prescribed.

(2) The [Commissioner/Chief Commissioner] may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified.

(3) Where the [Commissioner/ Chief Commissioner] considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(4) Every registered taxable person whose turnover during a financial year **exceeds the prescribed limit shall get his accounts audited by a chartered accountant** or a cost accountant and shall submit to the proper officer a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 39 and such other documents in the form and manner as may be prescribed in this behalf.

(5) Subject to the provisions of clause (g) of sub-section (4) of section 17, where the registered taxable person fails to account for the goods and/or services in accordance with sub-section (1), the proper officer shall determine the amount of tax payable on the goods and/or services that are not accounted for, as if such goods and/or services had been supplied by such person and in this regard, the provisions of section 66 or 67, as the case may be, shall apply, *mutatis mutandis*, for determination of such tax.

(6) Every owner or operator of warehouse or godown or any other place used for storage of goods irrespective of whether he is a registered taxable person or not shall maintain records of consigner, consignee and other relevant details of the goods as may be prescribed.

Author comments: Every registered person will be required to keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf.

Further, it is also provided that every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts, the reconciliation statement under sub-section (2) of section 30 and such other documents in the form and manner as may be prescribed in this behalf.

54. Period of retention of accounts

Every registered taxable person required to keep and maintain books of account or other records under sub-section (1) of section 53 shall retain them until the expiry of **sixty months** from the due date of

filing of Annual Return for the year pertaining to such accounts and records:

PROVIDED that a taxable person, who is a party to an appeal or revision or any other proceeding before any Appellate Authority or Revisional Authority or Tribunal or Court, whether filed by him or by the department, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding or investigation, or for the period specified above, whichever is later.

Author comments: Every registered taxable person will be required to keep and maintain books of account or other records until the expiry of **sixty months** from the last date of filing of Annual Return for the year pertaining to such accounts and records. Further in case of appeal/ revision, records should be maintained for a period of one year after final disposal of such appeal /revision.

CHAPTER – XIII

JOB WORK

55. Special procedure for removal of goods for certain purposes

(1) A registered taxable person (hereinafter referred to in this section as the "principal") may, under intimation and subject to such conditions as may be prescribed, send any inputs and/or capital goods, without payment of tax, to a **job worker** for job-work and from there subsequently send to another job worker and likewise, and shall -

(a) bring back inputs, after completion of job-work or otherwise, and/or capital goods, other than moulds and dies, jigs and fixtures, or tools, within **one year and three years**, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job-work or otherwise, and/or capital goods, other than moulds and dies, jigs and fixtures,

or tools, within one year and three years, respectively, of their being sent out from the place of business of a job-worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

PROVIDED that the **"**principal**"** shall not supply the goods from the place of business of a job worker in terms of clause (b) unless the said "principal" declares the place of business of the job-worker as his additional place of business except in a case-

(i) where the **job worker is registered** under section 23 ; or

(ii) where the "principal" is engaged in the supply of such goods as may be **notified** by the Commissioner in this behalf.

(2) **The responsibility for accountability of the inputs and/or capital goods shall lie with the "principal".**

(3) Where the inputs sent for job-work are not received back by the "principal" after completion of job-work or otherwise in accordance with clause(a) of sub-section (1) or are **not supplied** from the place of business of the job worker in accordance with clause (b) of sub-section (1) **within** a period of **one year** of their being sent out, it shall be deemed that such **inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out**.

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

(5) Notwithstanding anything contained in sub-sections (1) and (2), any **waste and scrap** generated during the job work may be supplied by the job worker directly from his place of business on payment of

tax if such job worker is registered, or by the principal, if the job worker is not registered.

Author comments: Section 55 prescribes the procedure for removal of goods to job worker through an **approval** from Commissioner. It is provided that the responsibility for accountability of the goods shall lie with the "principal". The Inputs send for the Job work may bring back within 1 year and specified capital goods within 3 year without payment of the duty.

CHAPTER – XIV
ELECTRONIC COMMERCE

56. Collection of tax at source

(1) Notwithstanding anything to the contrary contained in the Act, every **electronic commerce operator** (hereinafter referred to in this section as the "operator"), not being an agent, shall collect an amount calculated at the rate of **one percent** of the **net value of taxable supplies** made through it **where the consideration with respect to such supplies is to be collected by the operator**.

Explanation.- For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services, other than services notified under sub-section (4) of section 8, made during any month by all registered taxable persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator. The amount collected under sub-section (1) shall be **paid** to the account of the appropriate Government by the operator **within ten days** after the end of the month in which such collection is made in the manner as may be prescribed.

(3) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(4) The supplier who has supplied the goods or services through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in the manner prescribed.

(5) The details of supplies furnished by every operator under sub-section (4), shall, in the manner and within the period prescribed, be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under the Act.

(6) Where the details of outward supplies furnished by the operator under subsection (4) do not match with the corresponding details furnished by the supplier under section 32, the discrepancy shall be communicated to both persons in the manner and within the time as may be prescribed.

(7) The amount in respect of which any discrepancy is communicated under subsection (7) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated**,** shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(8) The concerned supplier shall, in whose output tax liability any amount has been added under sub-section (8), be liable to pay the tax payable in respect of such supply along with interest, at the rate

specified under sub-section (1) of section 45 on the amount so added from the date such tax was due till the date of its payment.

(9) Any authority not below the rank of Joint Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to—

(a) supplies of goods or services effected through such operator during any period, or

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers -

as may be specified in the notice.

(10) Every operator on whom a notice has been served under sub-section (10) shall furnish the required information within fifteen working days of the date of service of such notice.

(11) Any person who fails to furnish the information required by the notice served under sub-section (10) shall, without prejudice to any action that is or may be taken under section 85 , be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation.— For the purposes of this section, the expression 'concerned supplier' shall mean the supplier of goods and/or services making supplies through the operator.

Author comments: Section 56 deals with Tax Collection at Source provisions (TCS) for e-commerce operators. It provides that every electronic commerce operator, not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator.

Section casts an obligation to deposit the TCS within 10 days from end of the month, a portion of GST at source while the payments are being

made to the vendor. Further, a statement of all tax collected should also be submitted within 10 days after the end of such calendar month. This provision will certainly increase compliance burden on electronic commerce operators, as many of them have a large number of vendors. This provision is may even hamper the growth of electronic commerce operator.

CHAPTER– XV
ASSESSMENT

57. Self-Assessment

Every registered taxable person shall himself assess the taxes payable under this Act and furnish a return for each tax period as specified under section 34.

Author comments: The assessment under GST regime will be self – assessment.

58. Provisional Assessment

(1) Where the taxable person is unable to determine the value of goods and/or services or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer may pass an order allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed in this behalf, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

(3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-

section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

PROVIDED that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period as he may deem fit.

(4) The taxable person shall be liable to pay interest on any tax payable on the supply under provisional assessment but not paid on the due date specified under sub-section (7) of section 34 or the rules made thereunder at the rate specified under sub-section (1) of section 45, from the first day after the due date of payment of tax in respect of the said goods and/or services till the date of actual payment, whether such amount is paid before or after the issue of order for final assessment.

(5) Where the taxable person is entitled to a refund consequent to the order for final assessment under sub-section (3), subject to sub-section (8) of section 48, interest shall be paid on such refund as provided in section 50.

Author comments: This deals with provisional assessment. Provisional Assessment can be requested by an assessee in case he is unable to determine value or rate.

59. Scrutiny of returns

(1) The proper officer may scrutinize the return and related particulars furnished by the taxable person to **verify the correctness of the return** in such manner as may be prescribed.

(2) The proper officer shall inform the taxable person of the discrepancies noticed, if any, after such scrutiny in such manner as may be prescribed and **seek his explanation** thereto.

(3) In case the explanation is **found acceptable**, the taxable person shall be informed accordingly and no further action shall be taken in this regard.

(4) In case **no satisfactory explanation is furnished within a period of thirty days of being informed** by the proper officer or such further period as may be permitted by him or where the taxable person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 63, 64 or section 79, or proceed to determine the tax and other dues under sub-section (7) of section 66 or under sub-section (7) of section 67.

Author comments: Under Section 59 proper officer may scrutinize the return and related particulars furnished and if any discrepancies noticed then then such proper officer may seek an explanation from taxable person. The proper officer may initiate appropriate action including (under section 63, 64 or section 79), or proceed to determine the tax and other dues under sub-section (7) of section 66 or under sub-section (7) of section 67 if:

- No satisfactory explanation is furnished within a period of thirty days of being informed or
- After accepting the discrepancies, fails to take the corrective measure in his return

60. Assessment of non-filers of returns

(1) Where a registered taxable person fails to furnish the return required under section 34 or section 40, even after the service of a notice under section 41, the proper officer may proceed to assess the tax liability of the said person to the **best of his judgement** taking into account all the relevant material which is available or which he has gathered and issue an assessment order within the time limit specified in sub-section (8) of section 67.

(2) Where the taxable person furnishes a valid return within **thirty days** of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been **withdrawn**.

Explanation.— Nothing in this section shall preclude the liability for payment of interest under section 45 and/or for payment of late fee under section 42.

Author comments: This section deals with best judgment assessment of registered taxable person. It enables the GST Authorities to proceed to assess the tax liability of the specified person to the best of his judgement. It is also provided that in case valid return is furnished within 30 days of service of assessment order then the said assessment order will be deemed to be withdrawn.

61. Assessment of unregistered persons

Notwithstanding anything to the contrary contained in section 66 or section 67, where a taxable person fails to obtain registration even though liable to do so, the proper officer may proceed to assess the tax liability of such taxable person to the **best of his judgement** for the relevant tax periods and issue an assessment order **within a period of five years from the due date for filing of the annual return** for the year to which the tax not paid relates:

PROVIDED that no such assessment order shall be passed **without giving a notice to show cause and without giving the person a reasonable opportunity** of being heard.

Author comments: This section deals with best judgment assessment of **un-registered** assessee. It enables the GST Authorities to proceed to assess the tax liability of such persons to the best of his judgement for the relevant tax periods and issue an assessment order within a period of **5 years** from the due date for filing of the annual return for the year to which the tax not paid relates. It is also provided that no such assessment order shall be passed without giving a **notice to show**

cause and without giving the person a reasonable opportunity of being heard

62. Summary assessment in certain special cases

(1) The **proper officer may, on any evidence showing a tax liability of a person coming to his notice**, with the previous permission of [Additional/Joint Commissioner], **proceed to assess the tax liability of such person to protect the interest of revenue** and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue:

PROVIDED that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount due under this section.

(2) On an application made within **thirty days** from the date of receipt of order passed under sub-section (1) by the taxable person or on his own motion, if the Additional/Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 66 or 67**.**

CHAPTER- XVI

AUDIT

63. Audit by tax authorities

(1) The [Commissioner of CGST/Commissioner of SGST] or any officer authorised by him, by way of a general or a specific order, **may undertake audit** of any taxable person for such period, at such frequency and in such manner as may be prescribed.

(2) The tax authorities referred to in sub-section (1) may conduct audit at the place of business of the taxable person and/or in their office.

(3) The taxable person shall be informed, by way of a notice, sufficiently in advance, not less than fifteen working days, prior to the conduct of audit in the manner prescribed.

(4) The audit under sub-section (1) shall be **completed within a period of three months** from the date of commencement of audit:

PROVIDED that where the [Commissioner] is satisfied that audit in respect of such taxable person cannot be completed within three months from the date of commencement of audit, he may, for the reasons to be recorded in writing, **extend the period by a further period not exceeding six months**.

Explanation.- For the purposes of this sub-section, 'commencement of audit' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the taxable person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the taxable person,

(i) to afford him the necessary facility to verify the books of account or other documents as he may require and which may be available at such place,

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the taxable person, whose records are audited, of the findings, the taxable person's rights and obligations and the reasons for the findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 66 or 67.

Author comments: This section provides for audit to be conducted by Authorities. Further, the section provides that such audit should be completed within 3 months (extendable by additional six months).

64. Special audit

(1) If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Deputy/Assistant Commissioner] **having regard to the nature and complexity** of the case and interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the [Commissioner], direct such taxable person by a communication in writing to get his records including books of **account examined and audited by a chartered accountant** or a cost accountant as may be nominated by the [Commissioner] in this behalf.

(2) The chartered accountant or cost accountant so nominated shall, **within the period of ninety days**, submit a report of such audit duly signed and certified by him to the said [Deputy/Assistant Commissioner] mentioning therein such other particulars as may be specified:

PROVIDED that the proper officer may, on an application made to him in this behalf by the taxable person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by another ninety days.

(3) The provision of sub-section (1) shall have effect notwithstanding that the accounts of the taxable person have been audited under any other provision of this Act or any other law for the time being in force or otherwise.

(4) The taxable person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings under this Act or rules made thereunder.

(5) The expenses of, and incidental to, the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the [Commissioner] and that such determination shall be final.

(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 66 or 67 , as the case may be.

Author comments: This section deals with Special Audit by Chartered Accountant or Cost Accountant nominated by Commissioner. Further, the section provides that such audit should be completed within 90 days (extendable upto additional 90 days).

65. Power of CAG to call for information for audit

The proper officer shall, upon request made in this behalf, make available to the Comptroller and Auditor General of India or an officer authorised by him, information, records and returns furnished under the Act, required for conduct of audit as required under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act (56 of 1971).

Author comments: This section empowers CAG for carrying out audit. The responsibility to provide details is cast on the Proper Officer.

CHAPTER – XVII

DEMANDS AND RECOVERY

66. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts

(1) Where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, the proper officer shall **serve notice** on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, **requiring him to show cause why** he should not pay the amount specified in the notice along with interest payable thereon under section 45 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall **issue the notice** under sub-section (1) **at least three months prior to the time limit** specified in sub-section (8) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a **statement**, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under subsection (1), on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those

covered under subsection (1) are the same as are mentioned in the earlier notice.

(4) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 45 **on the basis of his own ascertainment** of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The proper officer, on receipt of such information, **shall not serve any notice** under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made there under.

(5) Where the proper officer is of the opinion that the amount paid under sub-section (4) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(6) Where any person chargeable with tax under sub-section (1) or under subsection (3) pays the said tax along with interest payable under section 45 **within thirty days of issue of show cause notice, no penalty shall be payable** and all proceedings in respect of the said notice shall be deemed to be concluded.

(7) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to **ten percent of tax** or ten thousand rupees, whichever is higher, due from such person and issue an order.

(8) The proper officer shall issue the order under sub-section (7) within **three years from the due date for filing of annual return** for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates or, as the case may be, within three years from the date of erroneous refund.

67. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willfulmisstatement or suppression of facts

(1) Where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of **fraud, or any willful-misstatement or suppression of facts to evade tax**, the proper officer shall **serve notice** on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit requiring him to **show cause** why he should not pay the amount specified in the notice along with interest payable thereon under section 45 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least **six months** prior to the time limit specified in sub-section (8) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may **serve a statement**, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1), on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the sub-section (1), subject to the condition that the grounds relied upon for such periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(4) The person chargeable with tax may, **before service of notice** under sub-section (1) or, as the case may be, the statement under sub-section (3), **pay the amount of tax along with interest payable under section 45 and a penalty equivalent to fifteen per cent** of such tax on the basis of his **own ascertainment** of such

tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made there under.

(5) Where the proper officer is of the opinion that the amount paid under sub-section (4) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(6) Where any person chargeable with tax under sub-section (1) or under subsection (3) pays the said tax along with interest payable under section 45 and a penalty equivalent to **twenty five per cent of such tax within thirty days of issue of the notice**, all proceedings in respect of the said notice shall be deemed to be concluded.

(7) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(8) The proper officer shall issue the order under sub-section (7) within a period of **five years** from the due date for filing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates or, as the case may be, within five years from the date of erroneous refund.

(9) Where any person served with an order issued under sub-section (7) pays the tax along with interest payable thereon under section 45 and a penalty equivalent to **fifty percent of such tax within thirty days of the communication of order**, all proceedings in respect of the said tax shall be deemed to be concluded.

Explanation. - The expression "suppression" shall mean non-declaration of facts or information which a taxable person is statutorily

required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

68. General provisions relating to determination of tax

(1) Where the service of notice or issuance of order is stayed by an order of a Court, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (8) of section 66 or subsections (2) and (8) of section 67, as the case may be.

(2) Where any Appellate Authority or Tribunal or Court concludes that the notice issued under sub-section (1) or (3) of section 67 is not sustainable for the reason that the charges of fraud or any wilful mis-statement 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 for the period of three years, deeming as if the notice were issued under sub-section (1) or (3) of section 66.

(3) Where any order is required to be issued in pursuance of the direction of the Tribunal or a Court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of personal hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time, from time to time, to the said person and adjourn the hearing for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted more than three times to a person during the proceeding.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand

shall be confirmed on grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Tribunal or Court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded if the order is not issued within three years as provided for in sub-section (8) of section 66 or within five years as provided for in sub-section (8) of section 67.

(11) An issue on which the First 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 First Appellate Authority or the Appellate Tribunal or as the case may be, the High Court is pending, the period spent between the date of the decision of the First Appellate Authority and the date of decision of the Appellate Tribunal or the date of decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be, 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 referred to in sub-section (8) of section 66 or sub-section (8) of section 67, as the case may be, where proceedings are initiated by way of issue of a show cause notice under this section.

(12) Notwithstanding anything contained in section 66 or 67, where any amount of self-assessed tax in accordance with a return furnished under section 34 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 72.

Explanation 1.- The expression "all proceedings in respect of the said notice" shall include proceedings under chapter XX.

Explanation 2.- Where proceedings against the main noticee liable to pay tax has been concluded under section 66 or 67, the proceedings against all co-noticees liable to pay penalty under sections 85, 86, 89, 90 or 91 in the same proceedings shall be deemed to be concluded.

(13) Where any penalty is imposed under section 66 or 67, no penalty for the same act and/or omission shall be imposed on the same person under any other provision of the Act.

69. Tax collected but not deposited with the Central or a State Government

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Tribunal or Court or in any other provision of this Act or the rules made thereunder or any other law, 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 Central or a State Government, shall forthwith **deposit the said amount** to the credit of the Central or a State Government, regardless of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the credit of the Central or a State 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 why** the said amount as specified in the notice, should not be paid by him to the credit of the Central or a State Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section

(2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall, in addition to paying the amount referred to in sub-section (1) or (3), as the case may be, also be liable to pay interest thereon at the rate specified under section 45 from the date such amount was collected by him to the date such amount is paid by him to the credit of the Central or a State Government.

(5) An opportunity for personal hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an **order** within **one year from the date of issue of the notice**.

(7) Where the issuance of order is stayed by an order of the Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the credit of the Central Government or a State Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9) the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount referred to in subsection (10) may apply for the refund of the same in accordance with the provisions of section 48 within six months of the date of issue of public notice.

70. Tax wrongfully collected and deposited with the Central or a State Government

(1) A taxable person who has paid CGST/SGST (in SGST Act) on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply shall be granted refund of the amount of CGST /SGST (in SGST Act) so paid in such manner and subject to such conditions as may be prescribed.

(2) A taxable person who has paid IGST on a transaction considered by him to be an inter-state supply, but which is subsequently held to be an intra-state supply, shall not be required to pay any interest on the amount of CGST/SGST payable.

Author comments: It may be noted that section 70 (and section 19 of IGST Act) provides that if an assessee wrongly pays say CGST and SGST (on a belief that the transaction is intra-State) instead of IGST, then the assessee will be granted refund of wrongfully paid taxes. Further refund mechanism shall be separately provided in such cases to reclaim the tax wrongly paid. Accordingly, it is one of the beneficial change in the revised draft law as no interest shall be payable on payment of correct tax subsequently and refund may not require 2 years' time as given for normal refund.

Thus, determining each transaction to be 'intra-State' supply or an 'Inter-State' as GST could be very crucial in GST regime as wrong payment can lead to going through the onerous process of claiming refund and paying tax correct taxes.

71. Initiation of recovery proceedings

Any amount payable by a taxable person in pursuance of an order passed under the Act shall be paid by such person **within a period of ninety days** from the date of service of such order:

PROVIDED that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person, to make such payment within such shorter period as may be specified by him.

72. Recovery of tax

(1) Where any amount payable by a person to the credit of the Central or a State Government under any of the provisions of this Act or of the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the modes mentioned below: -

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(c)

(i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking

company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under this section has been issued, fails to make the payment in pursuance thereof to the Central or a State Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time or from time to time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the appropriate Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Central or a State Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less.

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or

on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the credit of the appropriate Government any such money or part thereof, as the case may be.

(d) the proper officer may, on an authorisation by the competent authority and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified there under as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974), the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any

amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the credit of the Central Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of SGST, during the course of recovery of SGST arrears, may recover the amount from the said person as if it were an arrear of SGST and credit the amount so recovered to the account of the Central Government.

(CGST ACT)

(3) Where any amount of tax, interest or penalty is payable by a person to the credit of the State Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of CGST, during the course of recovery of CGST arrears, may recover the amount from the said person as if it were an arrear of CGST and credit the amount so recovered to the account of the State Government.

(SGST ACT)

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central 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.

73. Bar on recovery proceedings

(1) Where a person has filed an appeal under section 98 or section 101, as the case may be, against the order of demand, the proper officer may not enforce the payment of demand until the appeal is resolved.

(2) Nothing in this section shall stay any proceedings by the proper officer for the recovery of any amount due under this Act which is not under appeal before First Appellate Authority or Tribunal.

74. Payment of tax and other amount in installments.

On an application filed by a taxable person, the [Commissioner/Chief Commissioner] may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly installments not exceeding twenty four, subject to payment of interest under section 45 with such restrictions and conditions as may be prescribed:

PROVIDED that where there is default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

75. Transfer of property to be void in certain cases

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

PROVIDED that, such charge or transfer shall not be void if it is made for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

76. Tax to be first charge on property

Notwithstanding anything to the contrary contained in any law for the time being in force, 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 Central or a State Government shall be a first charge on the property of such taxable person, or as the case may be, such person.

77. Provisional attachment to protect revenue in certain cases

(1) Where during the pendency of any proceedings under section 60, 61, 62 **,** 66, 67 or 79 the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such a manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

78. Continuation and validation of certain recovery proceedings

(1) Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereinafter in this section referred to as "Government dues")**,** is served upon any taxable person or any other person and any appeal, revision application is filed or other proceedings is initiated in respect of such Government dues, then -

(a) Where such Government dues are enhanced in such appeal, revision or other proceeding, the Commissioner shall serve upon the taxable person or any other person another notice of demand only in respect of the amount by which such Government dues are enhanced and any recovery proceeding in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision application or proceeding 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 proceeding –

(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 proceeding is pending;

(iii) Any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

CHAPTER- XVIII

INSPECTION, SEARCH, SEIZURE AND ARREST

79. Power of inspection, search and seizure

(1) Where the CGST/SGST officer, not below the rank of Joint Commissioner, has reasons to believe that –

(a) a taxable person has suppressed any transaction relating to supply of goods and/or services or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorize in writing any other officer of CGST/SGST to inspect any places of business of the taxable person or the persons engaged in

the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the CGST/SGST officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other CGST/SGST officer to search and seize or may himself search and seize such goods, documents, books or things:

PROVIDED that where it is not practicable to seize any such goods, the proper officer may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

PROVIDED FURTHER that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied on for the issue of notice under the Act or rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any *almirah*, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of CGST/SGST at such place and time as the authorised officer may indicate in this

behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Central or a State Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as the Central or a State Government may prescribe.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer under sub-section (2), he shall prepare an inventory of such goods in the manner as may be prescribed in this behalf.

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words

[Principal Commissioner/Commissioner of CGST/Commissioner of SGST] were substituted.

(11) Where the proper officer has reason to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of such person produced before the said officer and shall grant a receipt for the same, and shall retain the same for so long as may be necessary, in connection with any proceeding under this Act or for a prosecution.

(12) The [Commissioner] of CGST/SGST or an officer authorized by him may cause purchase of any goods and/or services by any person authorized by him from the business premises of any taxable person, to check issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued.

80. Inspection of goods in movement

(1) The Central or a State Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount to carry with him such documents as may be prescribed and also to carry with him such devices in such manner as may be prescribed in this behalf.

(2) The details in documents required to be carried under sub-section (1) shall be validated in the manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the aforesaid documents and devices for verification**,** and the said person shall be liable to produce the documents and devices and also allow inspection of goods.

Author comments: The proper officer is empowered to intercept any conveyance carrying goods. Further, documents to be accompanying such goods will be prescribed in cases where the value of goods is more than specified amount.

81. Power to arrest

(1) If the [Commissioner of CGST or the Commissioner of SGST] has reason to believe that any person has committed an offence specified in clause (a),(b),(c),(d) or clause (e) of sub-section (1) of section 92 and punishable under clause (i) and (ii) of sub-section (1) or under sub-section (2) of that section, he may, by order, authorise any CGST/SGST officer to arrest such person.

(2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty four hours.

(3) In the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner of CGST/SGST, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) All arrests made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest.

Author comments: Section 81 read with section 92 of GST Act provides for arrest and prosecution. GST being an economic legislation and not criminal legislation, proposed introduction of arrest/ prosecution provisions appears to be un-called for. Atleast for initial

years, when the GST provisions would be new, it is expected that the Government should tackle such issues with soft hands than threats of arrest. The GST law entrusted the power to arrest with the Commissioner if he has 'reason to believe' that a taxpayer has committed the aforesaid offense. Given the subjective wording (i.e. reason to believe), even genuine taxpayer, say the one who did not pay GST for bonafide belief that his activities do not attract GST, could end up in jail. Further, non-payment of GST could be an issue of 'interpretation' (as taxpayer may think his activity is covered under exemptions) than 'intention'. Thus, appropriate check and balances should be introduced by the Government in the GST law to ensure that the genuine taxpayers don't get nightmares

Recently, arrest of a travel portals executive was in news and in the said case even the Delhi High Court directed the Central Government to first establish evasion basis documents before taking coercive action against the said taxpayer. Thus, the Government should form a well thought strategy and should reconsider introduction of arrest provisions else atleast increase the threshold for arrest.

82. Power to summon persons to give evidence and produce documents

(1) Any [CGST/SGST officer], duly authorised by the competent authority in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(5) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(6) All persons so summoned shall be bound to attend, either in person or by an authorised representative, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:

(7) Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(8) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

83. Access to business premises

(1) Any CGST/SGST officer authorized by the [Additional/Joint Commissioner of CGST or SGST] shall have access to any place of business of a registered taxable person to inspect books of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the Additional/Joint Commissioner of CGST or SGST or a cost accountant or chartered accountant nominated under section 64, as the case may be,-

(i) the records as prepared or maintained by the registered taxable person and declared to the CGST/SGST officer as may be prescribed;

(ii) trial balance or its equivalent;

(iii) Statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and

(vi) any other relevant record**,** for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, as the case may be, within a reasonable time, not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.

Author comments: This section empowers proper officer to access to any business premises to inspect

84. Officers required to assist CGST/SGST officers

(1) All officers of Police, Railways**,** Customs and those of State/Central Government engaged in collection of goods and services tax and all officers of State/Central Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the CGST/SGST officers in the execution of this Act.

(2) The Central/State Government may, by notification, empower and require any other class of officers to assist the CGST/SGST officers in the execution of this Act when called upon to do so by the Commissioner of CGST/SGST.

CHAPTER – XIX

OFFENCES AND PENALTIES

85. Offences and penalties

(1) Where a taxable person who -

(i) supplies any goods and/or services 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 and/or services 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 credit of the appropriate 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 credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in terms of sub-section (1) of section 46 , 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 credit of the appropriate Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in terms of sub-section **Error! Reference source not found.** of section 56 , 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 credit of the appropriate Government under subsection 0 thereof, the amount collected as tax;

(vii) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;

(viii) fraudulently obtains refund of any CGST/SGST under this Act;

(ix) takes or distributes input tax credit in violation of section 21, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts and/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 the 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 and/or documents called for by a CGST/SGST officer in accordance with the provisions of this Act or rules made thereunder or furnishes false information and/or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the identification number of another taxable person;

(xx) tampers with, or destroys any material evidence;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

shall be liable to a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted or short deducted or deducted but not paid to the Government or tax not collected under section 56 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, as the case may be, whichever is higher.

(2) Any registered taxable person who supplies any goods or services on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized 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 percent of 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) above;

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the CGST/SGST officer, when issued with a summon for appearance to give evidence or produce a document in an enquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account; shall be liable to a penalty which may extend to twenty five thousand rupees.

Author comments: This section contains 21 omissions / commissions and prescribes penalty for the same.

86. General penalty

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty five thousand rupees.

Author comments: This section prescribes generic penalty of Rs 25,000/-.

87. General disciplines related to penalty

(1) No tax authority shall impose substantial penalties for minor breaches of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

Explanation.- For the purpose of this sub-section –

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees.

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on record.

(2) The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any taxable person without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) The tax authority shall ensure that when a penalty is imposed in an order for a breach of the laws, regulations or procedural

requirements, an explanation is provided therein to the persons upon whom the penalty is imposed, specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

(5) When a person voluntarily discloses to a tax authority the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the tax authority, the tax authority may consider this fact as a potential mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty prescribed under the Act is either a fixed sum or expressed as a fixed percentage.

88. Power to impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceeding under sections 59, 60, 61, 62, 66, 67, 89 or 90, he may issue an order levying such penalty after giving a notice and after giving a reasonable opportunity of being heard to such person.

89. Detention, seizure and release of goods and conveyances in transit

(1) Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or rules made thereunder, all such goods and the conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyances shall be liable to detention or seizure and after detention or seizure, shall be released ,-

(a) on payment of the applicable tax and penalty equal to one hundred percent of the tax payable on such goods, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon, where the owner of the goods does not come forward for payment of such tax and penalty.

(c) the proper officer detaining or seizing goods and/or conveyances shall issue a notice specifying the tax payable and thereafter, pass an order for payment of tax and penalty under clause (a) or (b), as the case may be.

(2) On payment of the amount referred to in sub-section (1), all liabilities under this section shall stand discharged in respect of such goods and such conveyance.

(3) where the person transporting any goods or, as the case may be, the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention, further proceedings shall be initiated in terms of section 90 and provisions of sub-section (6) of section 79, shall apply *mutatis mutandis* for provisional release of the detained goods or conveyances.

PROVIDED that where the detained goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

90. Confiscation of goods and/or conveyances and levy of penalty

(1) If any person –

(i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or rules made thereunder with intent to evade payment of tax**;** or

(v) uses any conveyance as a means of transport for carriage of taxable goods in contravention of the provisions of this Act or rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods and / or conveyance shall be liable to confiscation and the person shall be liable to penalty under section 85.

(2) Whenever confiscation of any goods or conveyance is authorized by this Act, the CGST/SGST officer adjudging it shall give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized or the owner or the person in-charge of the conveyance, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

PROVIDED that such fine 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 amount of penalty leviable under sub-section (1) of section 89:

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.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any tax and charges payable in respect of such goods.

(4) No order of confiscation of goods and/or conveyance and/or imposition of penalty shall be issued without serving a notice on such person requiring him to show cause and without giving the person a reasonable opportunity of being heard.

(5) Where any goods and/or conveyance are confiscated under this Act, the title of such goods and/or conveyance shall thereupon vest in the appropriate 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 and 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 such goods and/or conveyances and deposit the sale proceeds thereof with the Government.

91. Confiscation or penalty not to interfere with other punishments

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.

CHAPTER – XX
PROSECUTION AND COMPOUNDING OF OFFENCES

92. Prosecution

(1) Whoever commits any of the following offences, namely—

(a) supplies any goods and/or services without issue of any invoice or grossly misdeclares the description of the supply on invoice, in violation of the provisions of this Act, to intentionally evade tax;

(b) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment of credit or refund of duty;

(c) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(d) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(e) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;

(f) evades tax, fraudulently avails input tax credit or obtains refund–by an offence not covered under clause (a) to (e);

(g) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(h) obstructs or prevents any officer in the discharge of his duties under this Act;

(i) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;

(j) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;

(k) tampers with or destroys any material evidence or documents;

(l) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(m) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) to (l) 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 utilized or the amount of refund wrongly taken **exceeds two hundred and fifty 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 utilized or the amount of refund wrongly taken exceeds **one hundred lakh rupees but does not exceed two hundred and fifty lakh** rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken **exceeds fifty lakh rupees but does not exceed one 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 in the commission of an offence specified in clause (h), (k) or (l), with imprisonment for a term which may extend to six months and/or with fine;

(2) If 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:

PROVIDED that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, the

imprisonment referred to in sub-sections (1) and (2) shall not be for a term of less than six months.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in subsection (4) shall be non-cognizable.

(4) The offences specified in clause (a),(b),(c),(d) or (e) of sub-section (1) 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 one hundred lakh rupees shall be cognizable and non-bailable.

Explanation: The Commissioner concerned shall be the competent authority to take cognizance of the offence.

(5) A person shall not be prosecuted for any offence under this section except with the previous sanction of the designated authority.

Author comments: Section 92 read with section 81 provides for arrest provisions. We have provided the comparative analysis of arrest provisions as under:

Comparative table of arrest provisions:

Particulars	**Current regime**		**GST regime**		
	Excise	**Service Tax**			
Tax amount involved which triggers arrest provisions	1 crore	2 crore	50 lakhs	100 lakhs	250 lakh
Bailable	Bailable (if tax amount involved	Bailable (if tax not collected and tax	Bailable	Bailable	Non-bailable

	upto 50 lakhs)	amount involved upto 2 crore)			
Jail term	Upto 7 years	Upto 7 years	Upto 1 years	Upto 3 years	Upto 5 years
Remarks	Applicable in seven specified offenses	Applicable where the taxpayer has collected tax but not deposited	Applicable in 13 specified offenses		
Relevant legal provisions	Section 9 of Central Excise Act, 1944	Section 89 of Finance Act, 1994	Section 81 and section 92 of Model GST Law		

93. Cognizance of offences

No Court shall take cognizance of any offence punishable except with the previous sanction of the designated authority, and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

94. Presumption of culpable mental state

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.— In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

95. Relevancy of statements under certain circumstances

(1) A statement made and signed by a person before any gazetted officer of CGST/IGST/SGST during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

96. Offences by Companies and certain other persons

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section, -

1. "company" means a body corporate and includes a firm or other association of individuals; and
2. "director", in relation to a firm, means a partner in the firm.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or *karta* or managing trustee, as the case may be, 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 apply *mutatis mutandis* to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act**,** if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

97. Compounding of offences

(1) Any offence under the Act may, either before or after the institution of prosecution, be compounded by the Competent Authority on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

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 described under clause (a) to (g) of sub-

section (1) of section 92 and the offences described under clause (m) which are relatable to offences described under clause (a) to (g) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence (other than those in clause (a)) under the Act or under the provisions of any other SGST Act or IGST Act in relation to supplies of value exceeding one crore rupees;

(c) a person who has been accused of committing an offence under the Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act,1985 (61 of 1985), the Foreign Exchange Management Act, 1999 (42 of 1999) or any other Act other than the CGST/SGST Act;

(d) a person who has been convicted for an offence under this Act by a court;

(e) a person who has been accused of committing an offence specified in clauses (h),(k) or (l) of sub-section (1) of section 92; and

(f) any other class of persons or offences as may be prescribed:

PROVIDED FURTHER that any compounding allowed under the provision 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 as may be prescribed under the rules to be made under sub-section (1), subject to the minimum amount not being less than ten thousand rupees or fifty per cent of the tax involved, whichever is greater, and the maximum amount not being more than thirty thousand rupees or one hundred and fifty per cent of the tax, whichever is greater.

(3) On payment of such compounding amount as may be determined by the competent authority, no further proceedings shall be initiated

under the Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

CHAPTER–XXI
APPEALS AND REVISION

98. Appeals to First Appellate Authority

(1) Any person aggrieved by any decision or order passed against him under this Act or under the [SGST/CGST] Act as authorized under section 7 of the [SGST/CGST] Act by an adjudicating authority, may appeal to the prescribed First Appellate Authority within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, of his own motion, or upon request from the Commissioner of [SGST/CGST] call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act or under the [SGST/CGST] Act as authorized under section 7 of the [SGST/CGST] Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any GST Officer subordinate to him to apply to the First Appellate Authority within six months from the date on which the said decision or order is communicated to such person for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the First Appellate Authority, such application shall be dealt with by the First Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act relating to appeals shall, so far as may be, apply to such application.

(4) The First Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

(6) No appeal shall be filed under sub-section (1) unless the appellant has deposited –

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to ten percent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the First Appellate Authority for ordering a higher amount of pre-deposit, not exceeding twenty five percent of the amount of tax in dispute, in a case which is considered by the Commissioner of GST to be a "serious case".

Explanation .- For the purpose of this proviso, the expression "serious case" shall mean a case in which an order has been passed under section 67 involving a disputed tax liability of not less than Rupees Twenty Five Crores.

(7) The First Appellate Authority shall give an opportunity to the appellant of being heard, if he so desires.

(8) The First Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(9) The First Appellate Authority may, at the time of hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(10) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the authority that passed the said decision or order:

PROVIDED that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

PROVIDED FURTHER that where the First Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 66 or 67.

(11) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(12) The First Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

PROVIDED that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(13) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.

(14) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST or the authority designated by him in this behalf.

(15) Every order passed under this section shall, subject to the provisions of sections 99, 102, 106 or 107, be final.

Author comments: Section 98 deals with appeal provisions under CGST law. A person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the prescribed First Appellate Authority. The time limit prescribed for filing of appeal is **3 months**.

It is also provided that no appeal shall be filed unless the appellant has deposited a sum equal to **10%** of the amount in dispute (typically the GST payable plus fees/ penalties payable) arising from the said order, in relation to which the appeal has been filed.

It is also provided that the First Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of 1 year from the date on which it is filed.

99. Revisional powers of Chief Commissioner or Commissioner

(1) Subject to the provisions of section 112 and any rules made thereunder, the Chief Commissioner or Commissioner may on his own motion, or upon information received by him or on request from the Commissioner of [SGST/CGST], call for and examine the record of any proceeding, and if he considers that any decision or order passed under this Act or under the [SGST/CGST] Act as authorized under section 7 of the [SGST/CGST] Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the

revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Chief Commissioner or Commissioner shall not exercise any power under sub-section (1), if.-

(a) the order has been subject to an appeal under section 98 or under section 101 or under section 106 or under section 107 ; or

(b) the period specified under sub-section (2) of section 98 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.

(c) the order has already been taken for revision under this section at any earlier stage.

(3) Notwithstanding anything contained in sub-section (2), the Chief Commissioner or Commissioner may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of subsection (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

(4) Every order passed in revision under sub-section (1) shall, subject to the provisions of sections 102, 106 or 107, be final.

(5) If the said decision or order involves an issue on which 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 High Court or the Supreme Court against such decision of the

Appellate Tribunal or as the case may be, 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 as the case may be, 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 referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(6) Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period referred to in clause (b) of sub-section (2).

(7) For the purposes of this section, 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Chief Commissioner or Commissioner.

(8) For the purposes of this section, 'decision' shall include intimation given by any officer lower in rank than the Chief Commissioner or, as the case may be Commissioner.

100. Constitution of the National Appellate Tribunal

(1) The Central Government shall on the recommendation of the GST Council constitute a National Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal.

(2) The Appellate Tribunal shall be headed by a National President.

(3) The Appellate Tribunal shall have one branch for each State, which shall be called as the State GST Tribunal.

(4) Every State GST Tribunal will be headed by a State President.

(5) Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(6) The qualifications, eligibility conditions and the manner of selection and appointment of the National President, Members (Judicial) and the Member (Technical-CGST) shall be such as may be prescribed by the Central Government on the recommendations of the Council.

(7) The qualifications, eligibility conditions and the manner of selection and appointment of the State Presidents and the Members (Technical-SGST) shall be such as may be prescribed by the State Government, on the recommendations of the Council.

(8) The National President and the State Presidents shall exercise such powers and discharge such functions as may be prescribed on the recommendations of the Council.

On ceasing to hold office, the National President, the State Presidents or other Members of the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

(CGST Act)

100. Constitution of the Appellate Tribunal

The Appellate Tribunal constituted under section 100 of the CGST Act, 2016 shall be the Appellate Tribunal for the purposes of this Act.

(SGST Act)

101. Appeals to the Appellate Tribunal

(1) Any person aggrieved by an order passed against him under section 98 or section 99 of this Act or of the [SGST/CGST] Act as per the provisions of section 7 of the [SGST/CGST] Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed one lakh rupees.

(3) The [Commissioner] may, by order, constitute such Committees consisting of two officers as may be necessary for the purposes of review of and filing appeals against the orders passed under sub-section (10) of section 98, or as the case may be, under sub-section (1) of section 99.

(4) The Committee may, if it is of the opinion that an order passed under sub-section (10) of section 98, or as the case may be, under sub-section (1) of section 99 of this Act or of the [SGST/CGST] Act as per the provisions of section 7 of the [SGST/CGST] Act, is not legal or proper, direct any officer authorized by it in this behalf to apply to the Appellate Tribunal within six months from the date on which the order sought to be appealed against is communicated to the Commissioner for the determination of such points arising out of the said order as may be specified by the Committee:

PROVIDED that where the Committee differs in its opinion, it shall be deemed that the Committee has formed the opinion that the order under review is not legal or proper.

(5) Where in pursuance of an order under sub-section (4) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (10) of section 98, or as the case may be, under sub-section (1) of section 99 and the provisions of this Act shall, so far as may be, apply to such application, as they apply in relation to appeals filed under sub-section (1).

(6) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it

were an appeal presented within the time specified in sub-section (5).

(7) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in subsection (5) or sub-section (6) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.

(8) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a prescribed fee:

PROVIDED that no such fee shall be payable in the case of an appeal filed by the Commissioner or a memorandum of cross-objections referred to in sub-section (6).

(9) (a) No appeal shall be filed under sub-section (1) unless the appellant has deposited –

(i) 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

(ii) a sum equal to ten percent of the remaining amount of tax in dispute, in addition to the amount deposited under sub-section (6) of the section 98, arising from the said order, in relation to which the appeal has been filed:

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the Appellate Tribunal for ordering a higher amount of predeposit, not exceeding twenty-five percent of the amount of tax in dispute after taking into account the amount deposited in the first appeal, in a case which is considered by the Commissioner of GST to be a "serious case".

Explanation. - For the purpose of this proviso, the expression "serious case" shall mean a case in which an order has been passed under section 67 involving a disputed tax liability of not less than Rupees Twenty Five Crores.

(b) The provisions of clause (a) shall also apply mutatis mutandis to cross objections filed under sub-section (6).

(10) Every application made before the Appellate Tribunal, —

(a) in an appeal for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a prescribed fee :

PROVIDED that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of GST.

Author comments: Section 101 deals with appeal before Appellate Tribunal under CGST law. A person aggrieved, may appeal to the Appellate Tribunal within 3 months.

It is also provided that no appeal shall be filed unless the appellant has deposited a sum equal to 10% of the amount in dispute (typically the GST payable plus fees/ penalties payable) arising from the said order, in relation to which the appeal has been filed.

102. Orders of Appellate Tribunal

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the First Appellate Authority, or the revisional authority, as the case may be, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any mistake apparent from the record, if such mistake is noticed by it on its own accord, or is brought to its notice by the Commissioner of GST or the other party to the appeal within a period of three months from the date of the order:

PROVIDED that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(4) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the First Appellate Authority or the revisional authority, or the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.

(6) Save as provided in section 106 or section 107, orders passed by the Appellate Tribunal on an appeal shall be final.

103. Procedure of Appellate Tribunal

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the National President or the State Presidents from amongst the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one Member (Judicial), one Member (Technical - CGST) and one Member (Technical - SGST).

(3) The National President or a State President, or any other member of the Appellate Tribunal authorized in this behalf by the National President or a State President, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member, where in any disputed case, the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty involved, does not exceed ten lakh rupees.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the National President or the State President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

a) discovery and inspection;

b) enforcing the attendance of any person and examining him on oath;

c) compelling the production of books of account and other documents; and

d) issuing commissions.

(7) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

104. Interest on refund of pre-deposit

Where an amount deposited by the appellant under sub-section (6) of section 98 or under sub-section (9) of section 101 is required to be refunded consequent to any order of the First Appellate Authority or of the Appellate Tribunal, as the case may be, interest at the rate specified under section 50 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

105. Appearance by authorised representative

(1) Any person who is entitled or required to appear before a GST Officer appointed under this Act, or the First Appellate Authority or the Appellate Tribunal in connection with any proceedings under the Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

(a) his relative or regular employee; or

(b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

(c) any chartered accountant, a cost accountant or a company secretary, who holds a valid certificate of practice and who has not been debarred from practice; or

(d) a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower in rank than that of a Group-B gazetted officer for a period of not less than two years.

(e) any person who has been authorized to act as a Tax Return Preparer on behalf of the concerned registered taxable person.

(3) Notwithstanding anything contained in this section, no person who was serving in the indirect tax departments of the Government of India or of any State Government, and has retired or resigned from such service after having served for not less than two years as a Gazetted officer in that department shall be entitled to appear as an authorised representative in any proceedings before a GST Officer for a period of one year from the date of his retirement or resignation, as the case may be.

(4) No person, —

a) who has been dismissed or removed from government service; or

b) who is convicted of an offence connected with any proceeding under this Act, the SGST Act, the IGST Act, the Customs Act, 1962 (52 of 1962), the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act 1994 (25 of 2014) 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 has become an insolvent, shall be qualified to represent any person under sub-section (1) --

(i) for all times in the case of a person referred to in clause (a),

(ii) for such time as the Commissioner of GST or the competent authority under the Acts referred to in clause (b) may, by order, determine in the case of a person referred to in clause (b), and

(iii) for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person is found guilty of misconduct by the prescribed authority in connection with any proceedings under this Act or under any of the Acts referred to in clause (b) of sub-section (4), the prescribed authority may direct that he shall henceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or sub-section (5) shall be subject to the following conditions, namely:—

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the competent authority [Central/State Government] to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

106. Appeal to the High Court

(1) The Commissioner of GST or the other party aggrieved by any order passed by the Appellate Tribunal under section 102 may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

(2) Notwithstanding the provisions of sub section (1), no appeal shall lie to High Court against an order passed by the Appellate Tribunal under section 102 if such order relates, among other things, to:-

(a) a matter where two or more States, or a State and Center, have a difference of views regarding the treatment of a transaction(s) being intra-State or interState; or

(b) a matter where two or more States, or a State and Center, have a difference of views regarding place of supply.

(3) An appeal under sub-section (1) shall be -

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of GST or the other party;

(b) accompanied by a prescribed fee ;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(4) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.

(5) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(6) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

PROVIDED that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(7) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(8) The High Court may determine any issue which - (a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as herein referred to above.

(9) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(10) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(11) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(12) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

107. Appeal to the Supreme Court

(1) An appeal shall lie to the Supreme Court from any judgment or order passed by the High Court in an appeal made under section 106, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) An appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal under section 102 where such order is of the nature referred to in sub section (2) of section 106.

108. Hearing before Supreme Court

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 107 as they apply in the case of appeals from decrees of a High Court :

PROVIDED that nothing in this sub-section shall be deemed to affect the provisions of section 109.

(2) The costs of the appeal shall be at the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 106 in the case of a judgment of the High Court.

109. Sums due to be paid notwithstanding appeal etc.

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Appellate Tribunal under sub-section (1) of section 102 or an order passed by the High Court under section 106, as the case may be, shall be payable in accordance with the order so passed.

110. Exclusion of time taken for copy

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time required for obtaining a copy of such order, shall be excluded.

111. Appeal not to be filed in certain cases

(1) The Board or the State Government may, on the recommendation of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the GST officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under subsection (1), the GST officer has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such GST officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the GST Officer pursuant to the orders or instructions or directions

issued under subsection (1), no person, being a party in appeal or application shall contend that

the GST officer has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the GST Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

112. Non Appealable decisions and orders

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any one or more of the following matters:-

(a) An order of the Commissioner or other competent authority for transfer of proceeding from one officer to another officer; or

(b) An order pertaining to the seizure or retention of books of account, register and other documents; or

(c) An order sanctioning prosecution under the Act; or (d) An order passed under section 74.

CHAPTER– XXII
ADVANCE RULING

113. Definitions

In this Chapter, unless the context otherwise requires, -

(a) "advance ruling" means a written decision provided by the Authority or, as the case may be, the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 116 or sub-section (1) of section 118 , as the case may be, in relation to

the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant;

(b) "applicant" means any person registered or desirous of obtaining registration under the Act.

(c) "application" means an application made to the Authority under sub-section (1) of section 116;

(d) "Authority" means the Authority for Advance Ruling, constituted under section 114;

(e) "Appellate Authority" means the Appellate Authority for Advance Ruling constituted under section 115.

114. Authority for Advance Ruling

(1) The Authority shall be located in each State.

(2) The Authority shall comprise of one member CGST and one member SGST to be appointed respectively by the Central Government and the State Government.

(3) The qualifications, eligibility conditions, method and the process of appointment of the members shall be as may be prescribed.

115. Appellate Authority for Advance Ruling

(1) The Appellate Authority shall be located in each State.

(2) The Appellate Authority shall comprise of the Chief Commissioner of CGST as designated by the Board and the Commissioner of SGST having jurisdiction over the applicant.

116. Application for Advance Ruling

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought shall be in respect of,

(a) classification of any goods and/or services under the Act;

(b) applicability of a notification issued under provisions of the Act having a bearing on the rate of tax;

(c) the principles to be adopted for the purposes of determination of value of the goods and/or services under the provisions of the Act;

(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 and/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 and/or services amounts to or results in a supply of goods and/or services, within the meaning of that term.

(3) The application shall be accompanied by a fee as may be prescribed.

117. Procedure on receipt of application

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the officers as may be prescribed and, if necessary, call upon him to furnish the relevant records:

PROVIDED that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said prescribed officers.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorized representative and the prescribed officer or his authorized representative, by order, either admit or reject the application:

PROVIDED that the Authority shall not admit the application where the question raised in the application is, -

(a) already pending in the applicant's case before any First Appellate Authority, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the First Appellate Authority, the Appellate Tribunal or any Court;

(c) the same as in a matter already pending in any proceedings in the applicant's case under any of the provisions of the Act;

(d) the same as in a matter in the applicant's case already decided by the adjudicating authority or assessing authority, whichever is applicable:

PROVIDED FURTHER that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

PROVIDED ALSO that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the prescribed officers.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or the authorized representative of the applicant as well as to the authorized representative of the prescribed or the jurisdictional CGST/SGST officer, pronounce its advance ruling on the question specified in the application.

Explanation. - For the purposes of this sub-section, "authorized representative" shall have the meaning assigned to it in section 105.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority or, as the case may be, the Appellate Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application or, as the case may be, reference made under sub-section (5).

(7) Where the members of the Appellate Authority differ on any point or points referred to it under sub-section (5), it shall be deemed that

no advance ruling can be issued in respect of the question covered by the reference application.

(8) A copy of the advance ruling pronounced by the Authority or, as the case may be, the Appellate Authority duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and the jurisdictional CGST / SGST officer and, as the case may be, to the Authority, as soon as may be, after such pronouncement.

(9) Any ruling pronounced under this section shall have prospective effect only.

118. Appeal to the Appellate Authority

(1) The prescribed or jurisdictional CGST/SGST officer or, as the case may be, an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 117, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the prescribed or the jurisdictional CGST/SGST officer or, as the case may be, the applicant:

PROVIDED that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

119. Orders of the Appellate Authority

(1) The Appellate Authority may, after giving the parties to the appeal, an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing appeal under section 118.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question covered under the appeal.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in the prescribed manner shall be sent to the applicant, the prescribed or the jurisdictional CGST / SGST officer and to the Authority, as soon as may be, after such pronouncement.

120. Rectification of Advance Ruling

The Authority or, as the case may be, the Appellate Authority may amend any order passed by it under section 117 or section 119 , as the case may be, so as to rectify any mistake apparent from the record, if such mistake is noticed by the Authority or, as the case may be, the Appellate Authority on its own accord, or is brought to its notice by the prescribed or the jurisdictional CGST / SGST officer or the applicant within a period of six months from the date of the order: PROVIDED that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the Authority or, as the case may be, the Appellate Authority has given notice to the applicant or, as the case may be, the appellant of its intention to do so and has allowed him a reasonable opportunity of being heard.

Explanation.— For the removal of doubts, it is hereby clarified that the Authority or, as the case may be, the Appellate Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order.

121. Applicability of Advance Ruling

(1) The advance ruling pronounced by the Authority or, as the case may be, the Appellate Authority under this chapter shall be binding only -

(a) on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 116 of the application for

advance ruling; (b) on the jurisdictional tax authorities in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless the law, facts or circumstances supporting the original advance ruling have changed.

122. Advance Ruling to be void in certain circumstances

(1) Where the Authority or, as the case may be, the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 117 or under sub-section (1) of section 119 has been obtained by the applicant or, as the case may be, the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of the Act shall apply to the applicant as if such advance ruling had never been made:

PROVIDED that no order shall be passed under this sub-section unless an opportunity has been given to the applicant of being heard.

Explanation.- The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded in computing the period specified in sub-sections (2) and (8) of section 66 or sub-sections (2) and (8) of section 67, as the case may be.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the prescribed officers.

123. Powers of the Authority and Appellate Authority

(1) The Authority or, as the case may be, the Appellate Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Authority or, as the case may be, 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 (2 of 1974), and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

124. Procedure of the Authority and the Appellate Authority

The Authority or, as the case may be, the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under the Act.

CHAPTER– XXIII
PRESUMPTION AS TO DOCUMENTS

125. Presumption as to documents in certain cases

Where any document-

(i) is produced by any person under the Act or any other law, or

(ii) has been seized from the custody or control of any person under the Act or any other law, or

(iii) has been received from any place outside India in the course of any proceedings under the Act or any other law

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall-

(a) unless the contrary is proved by such person, presume —

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

126. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

(1) Notwithstanding anything contained in any other law for the time being in force, —

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question; or

(d) any information stored electronically in any device or media, including any hard copies made of such information

shall be deemed to be also a document for the purposes of the Act and the rules made thereunder and shall be admissible in any proceedings there under, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely:—

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether —

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(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;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, —

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes and includes the hard disc thereof or a mirror image of hard disc thereof; and

(b) any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

CHAPTER– XXIV

LIABILITY TO PAY IN CERTAIN CASES

127. Liability in case of transfer of business

(1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall jointly and severally be liable wholly or, as the case may be, to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee or the lessee of a business referred to in subsection (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods and/or services effected by him with effect from the date of such transfer and shall, if he is an existing taxable person, apply within the prescribed time for amendment of his certificate of registration.

128. Liability of agent and principal

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall be jointly and severally liable to pay the tax payable on such goods under the Act.

129. Liability in case of amalgamation /merger of companies

(1) When two or more companies are amalgamated or merged by the order of court or of Tribunal or of the Central Government 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 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 shall be liable to tax accordingly.

(2) Notwithstanding anything contained in the said order, for all purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled, where necessary, with effect from the date of the said order.

Explanation - Words and expressions used in this section but not defined shall have the respective meanings assigned to them in the Companies Act, 2013 (18 of 2013).

130. Liability in case of company in liquidation

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereinafter referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due, shall jointly and severally be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such nonrecovery is not attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Explanation.- For the purposes of this section, the expressions "company" shall have the meaning respectively assigned to them under clause (20) and clause (68) of section 2 respectively of the Companies Act, 2013 (18 of 2013).

131. Liability of directors of private company

(1) Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax due from a private company in respect of any supply of goods or services for any period or from any other company in respect of any supply of any period during which such other company was a private company cannot be recovered, then, every person who was a director of the private company during such period shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax assessed in respect of any supply of goods or services for any period during which such company was a private company cannot be recovered, 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 due in respect of any supply of such private company.

Explanation.— For the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.

132. Liability of partners of firm to pay tax

Notwithstanding any contract to the contrary, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall jointly and severally be liable for such payment:

PROVIDED that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner

shall be liable to pay tax, interest or penalty due up to the date of his retirement, whether determined or not, on that date:

PROVIDED FURTHER that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

133. Liability of guardians, trustees etc.

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, 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 shall, so far as may be, apply accordingly.

134. Liability of Court of Wards etc.

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager, as the case may be, 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 shall, so far as may be, apply accordingly.

135. Special provision regarding liability to pay tax, interest or penalty in certain cases

(1) Where a person, liable to pay tax, interest or penalty under this Act, dies, then-

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, penalty or interest due from such person under this Act,-

whether such tax interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) Where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons, as the case may be, is partitioned amongst the various members or groups of members then each member or group of members shall jointly and severally be liable to pay the tax, interest or penalty due from the taxable person under this Act upto the time of

the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) Where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay the tax, interest or penalty due from the firm under this Act, up to the time of dissolution whether such tax, interest or penalty has been

determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Where a taxable person liable to pay tax, interest or penalty under this Act,-

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian, or

(b) is a trustee who carries on the business under a trust for a beneficiary.

then if the guardianship or trust is terminated, the ward or, as the case may be, 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.

136. Liability in other cases

(1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business-

(a) the tax payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who was at the time of such discontinuance, a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, be liable jointly and severally for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of

association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 132, jointly and severally be liable to pay tax, interest and penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or, as the case may be, to partition.

Explanation.- For the purpose of this chapter, a limited liability partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2012 (743 of 2012) shall also be considered as a firm.

CHAPTER– XXV
MISCELLANEOUS PROVISIONS

137. Special Procedure for certain processes

The Central/State Government may, on recommendation of the Council, by notification and subject to such conditions and safeguards as may be specified therein, in respect of certain classes of taxable persons to be notified in this behalf, specify special procedures with regard to registration, filing of return, payment of tax and administration of such taxable persons by the CGST or SGST officers and the said taxable persons may opt to follow the procedures so prescribed.

138. GST compliance rating

(1) Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act.

(2) The GST compliance rating score shall be determined on the basis of parameters to be prescribed in this behalf.

(3) The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain in the manner prescribed.

Authors comments: In GST regime, every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act. Thus, in GST regime compliances will be of paramount importance as non-compliance will impact the rating which will be placed in the public domain (and thus could affect reputation of a business).

139. Obligation to furnish information return

(1) Any person, being —

(a) a taxable person; or

(b) a local authority or other public body or association; or

(c) any authority of the State Government responsible for the collection of value added tax or sales tax or state excise duty or an authority of the Central Government responsible for the collection of Excise duty or Customs duty; or

(d) an income tax authority appointed under the provisions of the Income-tax Act, 1961 (43 of 1961); or

(e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934); or

(f) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003 (36 of 2003), or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or

(g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or

(h) a Registrar within the meaning of the Companies Act, 2013 (18 of 2013); or

(i) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988); or

(j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013); or

(k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or

(l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); or

(m) an officer of the Reserve Bank of India, constituted under section 3 of the
Reserve Bank of India Act, 1934 (2 of 1934); or

(n) Goods and Service Tax Network; or

(o) a person to whom a Unique Identity Number has been granted under sub-section (8) of section 23 ;or

(p) any other person as may be specified, on the recommendation of the Council, by the Central or State Government-

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

(2) Where the prescribed authority considers that the information submitted in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed

authority may allow and if the defect is not rectified within the said period of thirty days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such information return shall be treated as not submitted and the provisions of this Act shall apply.

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

140. Penalty for failure to furnish information return

If a person who is required to furnish an information return under section 139 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues.

141. Power to collect statistics

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

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

(3) The form in which the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such

information or returns should be furnished, shall be as may be prescribed.

142. Disclosure of information required under section 141

(1) No information of any individual return or part thereof, with respect to any matter given for the purposes of section 141 shall, without the previous consent in writing of the taxpayer or person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular taxpayer and no such information shall be used for the purpose of any proceedings under the provisions of the Act.

(2) Except for the purposes of prosecution under the Act, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in that section.

(3) If any person required to furnish any information or return under section 141,-

(a) without reasonable cause fails to furnish such information or return as may by that section be required, or

(b) willfully furnishes or causes to furnish any information or return which he knows to be false,

he shall, on conviction, be punished with fine which may extend to one hundred rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of one thousand rupees.

(4) If any person engaged in connection with the collection of statistics under section 141 or compilation or computerization thereof willfully discloses any information or the contents of any return given or made under that section, otherwise than in execution of his duties under that section or for the purposes of the prosecution of an offence under the Act or under any other Act, he shall, on conviction, be

punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both:

PROVIDED that, no prosecution shall be instituted under the subsection, except with the previous sanction of the Central Government or State Government.

(5) Nothing in this section shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the competent authority, it is desirable in the public interest, to publish such information.

143. Taking assistance from an IT professional

If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Deputy/Assistant Commissioner] having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the information pertaining to a taxable person stored on a computer system does not reveal correct details, he may take assistance of an Information Technology professional for extraction of information from such computer system.

144. Drawal of samples

The [Commissioner] of CGST/SGST or an officer authorized by him may take samples of goods from the possession of any taxable persons, where he considers it necessary, and provide a receipt for any samples so taken.

145. Burden of Proof

If any person claims that he is eligible for input tax credit the burden of proving such claim or claims shall lie on him.

146. Persons discharging functions under the Act shall be deemed to be public servants

All persons discharging functions under the Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

147. Indemnity

(1) No legal proceedings shall lie against any goods and services tax officer, for anything which is done or intended to be done in good faith under the Act or the rules.

(2) No departmental proceedings shall lie against any goods and services tax officer for passing any adjudication order or appellate order in good faith under the Act or the rules.

148. Disclosure of information by a public servant

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or in any record of any proceedings under the Act shall, save as provided in sub-section (4), be treated as confidential;

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no Court shall save as aforesaid, be entitled to require any GST officer to produce before it or to give evidence before it in respect of particulars referred to in subsection (1).

(3) Save as provided in sub-section (4), if any GST officer discloses any of the particulars referred to in sub-section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both:

PROVIDED that, no prosecution shall be instituted under this section except with the previous sanction of the Central Government or the State Government, as the case may be.

(4) Nothing contained in this section shall apply to the disclosure of,-

(a) any such 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 (45 of 1860) or the Prevention of Corruption Act, 1988 (49 of 1988), or the Act, or any other law for the time being in force; or

(b) any such particulars to the Central Government or the State Government or to any person acting in the execution of this Act, for verification of such particulars or for the purpose of carrying out the object of the Act; or

(c) any such particulars when such disclosure is occasioned by the lawful employment under the Act of any process for the service of any notice or the recovery of any demand; or

(d) any such particulars to a Civil Court or Tribunal constituted under any Central law 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

(e) any such particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or

(f) any such particulars, where such particulars are relevant for the purpose 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

(g) any such particulars, to an officer of the Central Government or any State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or

(h) any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or

(i) any such particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, 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, cost accountant, chartered accountant or company secretary, as the case may be; or

(j) any such particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

(k) any such particulars to an officer of the Central Government or any State Government as may be necessary for the purposes of any other law in force in India; and

(l) any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Competent authority, it is desirable in the public interest, to publish such information.

149. Publication of information respecting persons in certain cases

(1) If the Competent Authority is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under the Act until the time for presenting an appeal to the First Appellate Authority under section 98 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation. – In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and 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 Competent Authority, circumstances of the case justify it.

150. Assessment proceedings, etc. not to be invalid on certain grounds

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of the Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings is/are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.

(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

151. Rectification of mistakes or errors apparent from record

Without prejudice to the provisions of section 150, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or summons or notice or certificate or any other document, may rectify any error or mistake which is apparent from record in such decision or order or summons or notice or certificate or any other document, either on its own motion or where such error or mistake

is brought to its notice by any CGST / SGST officer or by the affected person within a period of three months from the date of issue of such decision or order or summons or notice or certificate or other document, as the case may be:

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

PROVIDED FURTHER that the period of six months referred to in the first proviso shall not apply in such 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:

PROVIDED ALSO that the principles of natural justice shall be followed by the authority carrying out such rectification if it adversely affects any person.

Explanation.— For the removal of doubts, it is hereby clarified that the authority shall not, while rectifying any mistake apparent from record, amend substantive part of its decision or order or summons or notice or certificate or any other document passed or, as the case may be, issued under the provisions of this Act.

152. Bar of jurisdiction of civil courts

Save as provided by section 106 and 107, 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.

153. Levy of fees

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

154. Power of Central (or State) Government to make rules

(1) The Central Government (or the State Government) may, on the recommendation of the Council, make rules, including rules

conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may —

(i) provide for the date for determination of rate of tax and the place of supply of goods or services or both;

(ii) having regard to the normal practice in the supply of goods or services, define or specify the kinds of trade discount to be excluded from the value under section 15 including the circumstances in which and the conditions subject to which such discount is to be so excluded;

(iii) provide for determining the value of taxable supplies in the situations mentioned under section 15;

(iv) provide, subject to such conditions as may be prescribed, for the grant of input tax credit of tax paid on the input supplies of goods or services used in or in relation to the providing of the output taxable supplies of goods or services, and the manner of utilization of such credit;

(v) provide for the lapsing of input tax credit lying unutilized, in the circumstances as may be specified in the rules;

(vi) provide for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of input tax credit) on taxable person or suspension or revocation of registration of taxable person, for evasion of tax or misuse of input tax credit;

(vii) provide, subject to such conditions as may be prescribed, for the carrying forward of the unutilized balances of Cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT credit rules) lying with the taxable persons on the date of their switching over to GST;

(viii) specify the persons who shall get themselves registered under section 23 and the time, manner and form in which application for registration shall be made;

(ix) provide for the manner of verification of application and issue of registration under the Act and the fees, if any, to be charged therefor;

(x) provide for the situations and manner of grant of deemed registration under the Act;

(xi) provide for the manner of migration, amendment, surrender, revocation, suspension, cancellation of registration under the Act;

(xii) provide for the assessment and collection of tax, the authorities by whom functions under the Act are to be discharged, the issue of notices requiring payment, the manner in which tax shall be payable, and the recovery of tax not paid;

(xiii) impose on taxable persons or other persons as may be specified, the duty of furnishing information, maintaining records and filing returns, and may also prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;

(xiv) provide for the form, manner and frequency of the returns to be furnished and the late fee for delayed furnishing of return under relevant section;

(xv) provide for charging or payment of interest under the various provisions of the Act;

(xvi) provide for the detention or attachment of goods, plant, machinery or material and other movable or immovable properties for the purpose of exacting the tax on taxable supplies in respect of which breaches of the Act or rules made thereunder have been committed and the disposal of things so detained or attached or confiscated;

(xvii) authorise and regulate the compounding of offences against, or liabilities incurred under the Act or the rules made thereunder;

(xviii) provide for the amount to be paid for compounding and the manner of compounding of offences under section 97;

(xix) provide for publication, subject to such conditions as may be specified, the names and other particulars of persons found guilty of contravention of any provision of the Act or of any rule made thereunder;

(xx) provide for the manner of recovery of any amount due to the Central Government (or state government) under section 72;

(xxi) authorise and regulate the inspection and audit of business premises and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale, supply or transport of goods, and so far as such inspection or search is essential for the proper levy and collection of the tax imposed by the Act, of any other taxable supply of goods or services;

(xxii) specify the form and manner in which application for refund shall be made under section 48;

(xxiii) provide for the manner in which amounts shall be credited to the Consumer Welfare Fund, their utilization, and the form in which the accounts and records relating to the Fund shall be maintained;

(xxiv) specify the forms in which appeals, applications and memoranda of cross objections shall be filed and verified under Chapter XXI of the Act;

(xxv) provide for the qualifications and the manner of appointment of the National President, the State President, and the Members of the Appellate Tribunal under section 100 of the Act, and other matters related or incidental thereto;

(xxvi) regulate in such manner as the Central Government / State Government thinks fit, the movement of supplies from any part of India to any other part thereof;

(xxvii) regulate the removal of taxable supplies of goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a registered person, or a bonded warehouse, or to a market;

(xxviii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed for entry of goods into such warehouses and clearance of goods therefrom;

(xxix) provide for the distinguishing of supply of goods which have been manufactured after registration, of materials which have been imported, and of supply of goods on which tax has been paid, or which are exempt from tax under this Act, or any other class of goods as may be specified in such rules;

(xxx) require that taxable supplies of specified goods shall not be made except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

(xxxi) provide for the grant of a rebate of the tax paid on supply of goods or services which are exported out of India or shipped for consumption on a voyage to any port outside India including interest thereon;

(xxxii) provide for rebate of tax paid or payable on the taxable supply of services used as input services in the supply of goods or services exported out of India under section 48;

(xxxiii) provide for the charging of fees for the examination of goods intended for export out of India and for rendering any other service by a GST Officer under this Act or the rules made thereunder;

(xxxiv) authorise the Board (or competent authority) or officers of GST, as the case may be, appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government (or the State Government) under this section;

(xxxv) provide for the manner of provisional attachment of property under section 77;

(xxxvi) make provisions for determining export of taxable supply of services;

(xxxvii) provide for grant of exemption to, or rebate of tax paid on, taxable supply of services which are exported out of India;

(xxxviii) provide for manner of administering of payment of taxes under the compounding of tax;

(xxxix) provide for dealing with situations where goods are returned;

(xl) provide for specifying the details to be given in the invoices, the maintenance of accounts, the furnishing of audit reports, and matters related thereto;

(xli) provide for the qualifications and the manner of appointment of the Advance Ruling authority under section 114 of the Act, and other matters related to functioning of the authority;

(xlii) provide for the qualifications of tax return preparers, tax practitioners and authorized representatives under various provisions of the Act, the manner of their selection or appointment or nomination, their codes of conduct, and other matters related or incidental thereto;

(xliii) provide for matters relating to tax deducted at source and tax collected at source;

(xliv) provide for matters covered by Chapter XXVII;

(xlv) provide for the suspension of certain facilities admissible under this Act or the rules made thereunder in case of repeat violations of conditions and restrictions as may be prescribed;

(xlvi) provide for manner of conduct of audit of registered taxable person under Chapter XVI; and

(xlvii) any other matter related to administering or enforcing the provisions of the Act.

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Chapter come into force.

(4) In making rules under this section, the Central Government (or State Government) may provide that any person committing a breach of any rule shall, where no other penalty is provided by the Act, be liable to a penalty not exceeding ten thousand rupees.

155. General power to make Regulations

(1) The Commissioner may make regulations consistent with this Act and rules, generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters namely-

(a) .....

(b) .....

(c) .....

156. Delegation of powers

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

157. Instructions to GST Officers

(1) The Board [the Competent Authority of the State Government as notified] may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the Act, issue such orders, instructions or directions to the GST Officers as it may

deem fit, and thereupon all GST officers and all other persons employed in the execution of the Act shall observe and follow such orders, instructions or directions:

PROVIDED that no such orders, instructions or directions shall be issued—

(a) so as to require any GST Officer to make a particular assessment/adjudication or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the First Appellate Authority in the exercise of his appellate functions.

(2) The Commissioner specified in sub-section (79), (83) of section 2, sub-section (3) of section 6, clause(b) of sub-section(4) of section 17 , clause (a) of subsection (7) of section 23 , sub-section (1) of section 32, sub-section (2) of section 33, sub-section (6) of section 34, section 88, sub-section (3) of section 101, sub-section (1) of section 141 , and sub-section (1) of 155 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

(CGST Act)

158. Removal of difficulties

(1) If any difficulty arises in giving effect to any provision of the Act, the Central Government / State Government may, on the recommendation of the Council, by general or special order published in the Gazette, do anything which appears to be necessary or expedient for the purpose of removing the difficulty:

PROVIDED that no such order shall be made after the expiry of a period of two years from the date of effect of the provision giving rise to the difficulty.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before Parliament / State Legislature.

159. Service of notice in certain circumstances

(1) Any decision, order, summons, notice or other communication under the Act or the rules made thereunder shall be served by any one of the following methods, namely: -

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxpayer or to his manager or to agent duly authorized or an advocate or a tax practitioner holding authority to appear in the proceeding on behalf of the taxpayer or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxpayer, or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised agent, if any at his last known place of business or residence, or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, or

(d) by making it available on the Common Portal, or

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

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence, or

(g) if the mode prescribed under (f) is also not practicable for any reason, then by affixing a copy thereof on the notice board of the office or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

160. Rounding off of tax etc.

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of the Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

161. Effect of amendments, etc., of rules, notifications or orders

Where any rule, notification or order made or issued under the Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not -

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; 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 rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

162. Publication of rules and notifications and laying of rules before Parliament / State Legislature

(1) All rules made and notifications issued under the Act shall be published in the Official Gazette.

(2) Every rule made under the Act, every notification issued under section -----, section ----, section ----- and section ----- (*depending on the final full draft*) and every order made under section -----, section ----, section ----- and section ----- (*depending on the final full draft*), other than an order relating to goods or services or both of strategic, secret, individual or personal nature, shall be laid, as soon as may be after it is made or issued, before Parliament / State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, Parliament / State Legislature agree in making any modification in the rule or notification or order, or Parliament / State Legislature agree that the rule should not be made or notification or order should not be issued or made, the rule or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

163. Anti-profiteering Measure

(1) The Central Government may by law constitute an Authority, or entrust an existing Authority constituted under any law, to examine whether input tax credits availed by any registered taxable person or the reduction in the price on account of any reduction in the tax rate

have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.

(2) The Authority referred to in sub-section (1) shall exercise such functions and have such powers, including those for imposition of penalty, as may be prescribed in cases where it finds that the price being charged has not been reduced as aforesaid.

CHAPTER– XXVI

REPEAL AND SAVING

164. Repeal and saving

(1) From the date of commencement of the Act, the (State) General Sales Tax/Value Added Tax Act, the Central Excise Act 1944, and the Central Excise Tariff Act 1985 shall apply only in respect of goods included in the entry 84 and entry 54 of the Union List and the State List respectively, of the Schedule VII to the Constitution of India.

PROVIDED that the aforesaid restriction of the application of the statutes referred above shall not—

(a) Revive anything not in force or existing at the time at which the restriction takes effect; or

(b) Affect the previous operation of the unrestricted Acts or anything duly done or suffered thereunder; or

(c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the unrestricted Acts; or

(d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the unrestricted Acts; or

(e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, adjudication and other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so restricted.

(f) Affect any proceeding including that relating to an appeal, revision, review or reference, instituted before the appointed day under the earlier law and such proceeding shall be continued under the earlier

law as if this Act had not come into force and the said law had not been repealed.

(2) The following Acts are hereby repealed, to the extent mentioned hereunder, namely:- (*as per the taxes subsumed under GST ……*.....)

(a) The Entry Tax Act,.....

(b) The Entertainment Tax, ...

(c) The Luxury Tax Act, ...

(d) Duty of Excise on Medicinal and Toilet Preparation Act, ... (e) Chapter V of the Finance Act, 1994.

(3) The repeals referred to in sub-section (2) 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 the repealed Acts or anything duly done or suffered thereunder; or

(c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Acts; or

(d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Acts; or

(e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, adjudication and other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been enacted.

(f) Affect any proceeding including that relating to an appeal, revision, review or reference, instituted before the appointed day under the earlier law and such proceeding shall be continued under the earlier

law as if this Act had not come into force and the said law had not been repealed.

CHAPTER XXVII

TRANSITIONAL PROVISIONS

165. General provisions

Notwithstanding anything contained elsewhere in the Act and until specifically so or otherwise prescribed or notified or done in accordance with the provisions of the Act,

(a) All persons appointed by the respective Governments for discharging various functions under the Central/State laws relating to taxes on goods or services (which are being subsumed in GST) and continuing in office on the appointed day, shall be deemed to have been appointed as GST officers/Competent Authorities under the respective provisions of the Act.

(b) The Central Government (or the State Government) may issue orders or make rules consistent with the need for smooth transition to GST including the matters not specifically covered herein after so long as such matters are not in conflict with the purposes of the Act.

166. Migration of existing taxpayers to GST

(1) On the appointed day, every person registered under any of the earlier laws and having a valid PAN shall be issued a certificate of registration on a provisional basis in such form and manner as may be prescribed.

(2) The certificate of registration issued under sub-section (1) shall be valid for a period of six months from the date of its issue:

PROVIDED that the said validity period may be extended for such further period as the Central/State Government may, on the recommendation of the Council, notify.

(3) Every person to whom a certificate of registration has been issued under subsection (1) shall, within the period specified under sub-section (2), furnish such information as may be prescribed.

(4) On furnishing of such information, the certificate of registration issued under subsection (1) shall, subject to the provisions of section 23, be granted on a final basis by the Central/State Government.

(5) The certificate of registration issued to a person under sub-section (1) may be cancelled if such person fails to furnish, within the time specified under subsection (2), the information prescribed under sub-section (3).

(6) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 23.

(7) A person to whom a certificate of registration has been issued on a provisional basis and who is eligible to pay tax under section 9, may opt to do so within such time and in such manner as may be prescribed:

PROVIDED that where the said person does not opt to pay tax under section 9 within the time prescribed in this behalf, he shall be liable to pay tax under section 8.

167. Amount of CENVAT credit carried forward in a return to be allowed as input tax credit

A registered taxable person, other than a person opting to pay tax under section 9 , shall be entitled to take, in his electronic credit ledger, the amount of cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished, by him under the earlier law in such manner as may be prescribed:

PROVIDED that the registered taxable person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act.

(CGST Law)

(1) A registered taxable person, other than a person opting to pay tax under section 9, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax **[**and Entry Tax**]** carried forward in the ~~a~~ return relating to the period ending with the day immediately preceding the appointed day, furnished, by him

under the earlier law, not later than ninety days after the said day, in such manner as may be prescribed:

PROVIDED that the registered taxable person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

PROVIDED FURTHER that so much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6 or section 6A of the Central Sales Tax Act, 1956 (74 of 1956) that is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

PROVIDED ALSO that an amount equivalent to the credit specified in the second proviso shall be refunded under *the* earlier law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

(2) The amount of credit under the second proviso to sub-section (1) shall be calculated in such manner as may be prescribed.

(SGST Law)

168. Unavailed cenvat credit on capital goods, not carried forward in a return, to be allowed in certain situations

A registered taxable person, other than a person opting to pay tax under section 9, shall be entitled to take, in his electronic credit ledger, credit of the unavailed cenvat credit in respect of capital goods, not carried forward in a return, furnished under the earlier law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

PROVIDED that the registered taxable person shall not be allowed to take credit unless the said credit was admissible as cenvat credit under the earlier law and is also admissible as input tax credit under this Act:

Explanation 1.- For the purposes of this section, the expression "unavailed cenvat credit" means the amount that remains after

subtracting the amount of cenvat credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of cenvat credit to which the said person was entitled in respect of the said capital goods under the earlier law.

Explanation 2.- Capital goods means the goods as defined under clause (a) of rule 2 of CENVAT Credit Rules, 2004.

(CGST Law)

A registered taxable person, other than a person opting to pay tax under section 9, shall be entitled to take, in his electronic credit ledger, credit of the unavailed input tax credit in respect of capital goods, not carried forward in a return, furnished under the earlier law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed :

PROVIDED that the registered taxable person shall not be allowed to take credit unless the said credit was admissible as input tax credit under the earlier law and is so admissible under this Act:

Explanation.- For the purposes of this section, the expression "unavailed input tax credit" means the amount that remains after subtracting the amount of input tax credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of input tax credit to which the said person was entitled in respect of the said capital goods under the earlier law.

(SGST Law)

169. Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations

(1) A registered taxable person, who was not liable to be registered under the earlier law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012 or a first stage dealer or a second stage dealer or a registered importer, shall be entitled to take, in his electronic credit ledger, credit of eligible

duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:

(i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said taxable person passes on the benefit of such credit by way of reduced prices to the recipient;

(iii) the said taxable person is eligible for input tax credit on such inputs under this Act;

(iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs;

(v) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(vi) the supplier of services is not eligible for any abatement under the Act:

PROVIDED that where a registered taxable person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then such registered taxable person shall, subject to such conditions, limitations and safeguards as may be prescribed, be allowed to take credit at the rate and in the manner prescribed.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

Explanation.— For the purpose of this section and section 170, section 171 and section 172, the expression "eligible duties and taxes" means-

(i) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(ii) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional

Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957);

(v) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001(14 of 2001);

(vi) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(vii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975); and

(viii) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994);—

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

(CGST Law)

(1) A registered taxable person, who was not liable to be registered under the earlier law or who was engaged in the sale of exempted goods under the earlier law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger, credit of the Value Added Tax [and entry tax] in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:

(i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said taxable person passes on the benefit of such credit by way of reduced prices to the recipient;

(iii) the said taxable person is eligible for input tax credit on such inputs under this Act;

(iv) the said inputs were not [specified in Schedule--- of the earlier law or in the rules made thereunder or in any

notification issued under the earlier law] as inputs on which credit was not admissible under the earlier law;

(v) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of tax under the earlier law in respect of such inputs; and

(vi) such invoice and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

(SGST Law)

170. Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations

(1) A registered taxable person, who was engaged in the manufacture of nonexempted as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994 (32 of 1994), shall be entitled to take, in his electronic credit ledger,

(a) the amount of Cenvat credit carried forward in a return furnished under the earlier law by him in terms of section 167; and

(b) the amount of Cenvat credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to exempted goods or services, in terms of section 169.

(CGST Law)

171. Credit of eligible duties and taxes in respect of inputs or input services during transit

(1) A registered taxable person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid before the appointed day,

subject to the condition that the invoice or any other duty/tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day:

PROVIDED that the aforesaid period of thirty days may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding thirty days.

(2) The said registered taxable person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under sub-section (1).

(CGST Law)

(1) A registered taxable person shall be entitled to take, in his electronic credit ledger, credit of Value Added Tax [and entry tax] in respect of inputs received on or after the appointed day but the tax in respect of which has been paid before the appointed day, subject to the condition that the invoice or any other tax paying document of the same was either received or recorded in the books of accounts of such person within a period of thirty days from the appointed day:

PROVIDED that the aforesaid period of thirty days may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding thirty days.

(2) The said registered taxable person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under sub-section (1).

(SGST Law)

172. Credit of eligible duties and taxes on inputs held in stock to be allowed to a taxable person switching over from composition scheme

(1) A registered taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law (hereinafter referred to in this section as a "composition taxpayer"), shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs

contained in semi-finished or finished goods held in stock on the appointed date subject to the following conditions:

(i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said person is not paying tax under section 9;

(iii) the said taxable person is eligible for input tax credit on such inputs under this Act;

(iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of inputs; and

(v) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

(CGST Law)

(1) A registered taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law (hereinafter referred to in this section as a "composition taxpayer"), shall be entitled to take, in his electronic credit ledger, credit of Value Added Tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date subject to the following conditions:

(i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said person is not paying tax under section 9;

(iii) the said taxable person is eligible for input tax credit on such inputs under this Act;

(iv) the said inputs were not [specified in Schedule--- of the earlier law or in the rules made thereunder or in any notification issued under the earlier law] as inputs on which credit was not admissible under the earlier law;

(v) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of tax under the earlier law in respect of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the appointed day; and

(vi) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

(SGST Law)

173. Exempted goods returned to the place of business on or after the appointed day

Where any goods on which duty had been exempt under the earlier law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, no tax shall be payable thereon if such goods are returned to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

PROVIDED that tax shall be payable by the person returning the goods if the said goods are liable to tax under this Act and are returned after a period of six months from the appointed day.

PROVIDED FURTHER that no tax shall be payable if the goods are returned by a person who is not registered under the Act.

(CGST Law)

Where any goods on which tax had been exempt under the earlier law at the time of sale thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, no tax shall be payable thereon if such goods are returned to the said place of business within a period of six months

from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

PROVIDED that tax shall be payable by the person returning the goods if the said goods are liable to tax under this Act and are returned after a period of six months from the appointed day.

PROVIDED FURTHER that no tax shall be payable if the goods are returned by a person who is not registered under the Act.

(SGST Act)

174. Duty (Tax – in SGST Act) paid goods returned to the place of business on or after the appointed day

Where any goods on which duty had been paid under the earlier law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered taxable person shall be eligible for refund of the duty paid under the earlier law where such goods are returned by a person, other than a registered taxable person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

PROVIDED that if the said goods are returned by a registered taxable person the return of the goods shall be deemed to be a supply.

(CGST Law)

Where any goods on which tax had been paid under the earlier law at the time of sale thereof, not being earlier than six months prior to the appointed day, are returned to the supplier thereof on or after the appointed day, the registered taxable person shall be eligible for refund of the tax paid under the earlier law where such goods are returned by a person, other than a registered taxable person, to the said supplier within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

PROVIDED that if the said goods are returned by a registered taxable person the return of the goods shall be deemed to be a supply.

(SGST Law)

175. Inputs removed for job work and returned on or after the appointed day

(1) Where any inputs received in a factory had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of earlier law prior to the appointed day and such inputs, are returned to the said factory on or after the appointed day, no tax shall be payable if such inputs , after completion of the job work or otherwise, are returned to the said factory within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if such inputs are not returned within a period of six months or the extended period , as the case may be, from the appointed day the input tax credit shall be liable to be recovered in terms of section 184.

(2) The provisions of sub-section (1) shall apply only if the manufacturer and the job worker declare the details of the inputs held in stock by the job worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

(CGST Law)

(1) Where any inputs received at a place of business had been despatched as such or despatched after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of earlier law prior to the appointed day and such inputs, are returned to the said place of business on or after the appointed day, no tax shall be payable if such inputs **,** after completion of the job work or

otherwise, are returned to the said place of business within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if such inputs are not returned within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184.

(2) The provisions of sub-section (1) shall apply only if the person despatching the inputs and the job worker declare the details of the goods held in stock by the job worker on behalf of the said person on the appointed day in such form and manner and within such time as may be prescribed.

(SGST Law)

176. Semi-finished goods removed for job work and returned on or after the appointed day

(1) Where any semi-finished goods had been removed from the factory to any other premises for carrying out certain manufacturing processes in accordance with the provisions of earlier law prior to the appointed day and such goods (herein after referred to as "the said goods") are returned to the said factory on or after the appointed day, no tax shall be payable if the said goods , after undergoing manufacturing processes or otherwise, are returned to the said factory within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if the said goods are not returned within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184:

PROVIDED also that the manufacturer may, in accordance with the provisions of the earlier law, transfer the said goods to the premises of any registered taxable person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

(2) The provisions of sub-section (1) shall apply only if the manufacturer and the job-worker declare the details of the goods held in stock by the jobworker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

(CGST Law)

(1) Where any semi-finished goods had been despatched from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of earlier law prior to the appointed day and such goods (herein after referred to as the "said goods") are returned to the said place of business on or after the appointed day, no tax shall be payable if the said goods , after undergoing manufacturing processes or otherwise, are returned to such place within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if the said goods are not returned ~~to him~~ within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184:

PROVIDED also that the person despatching the goods may, in accordance with the provisions of the earlier law, transfer the said goods to the premises of any registered taxable person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

(2) The provisions of sub-section (1) shall apply only if the person despatching the goods and the job worker declare the details of the goods held in stock by the job worker on behalf of the said person on the appointed day in such form and manner and within such time as may be prescribed.

(SGST Law)

177. Finished goods removed for carrying out certain processes and returned on or after the appointed day

Where any excisable goods manufactured in a factory had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of earlier law prior to the appointed day and such goods, (herein after referred to as the "said goods") are returned to the said factory on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said factory within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period of two months:

PROVIDED FURTHER that if the said goods are not returned within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184:

PROVIDED also that the manufacturer may, in accordance with the provisions of the earlier law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

(CGST Law)

Where any goods had been despatched from the place of business without payment of tax for carrying out tests or any other process, to any other premises, whether registered or not, in accordance with the provisions of earlier law prior to the appointed day and such goods (herein after referred to as the "said goods") are returned to the said place of business on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to such place within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if the said goods are not returned within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184:

PROVIDED ALSO that the person despatching the goods may, in accordance with the provisions of the earlier law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

(SGST Law)

178. Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract

(1) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods and/or services is revised upwards on or after the appointed day, the registered taxable person who had removed / provided such goods and/or services may issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such

supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

(CGST Law)

(1) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised upwards on or after the appointed day, the registered taxable person who had sold such goods may issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

(SGST Law)

(2) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods and/or services is revised downwards on or after the appointed day, the registered taxable person who had removed / provided such goods and/or services may issue to the recipient a supplementary invoice or credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

PROVIDED that the said registered taxable person shall be allowed to reduce his tax liability on account of issue of the said invoice or credit note only if the recipient of the invoice or credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(CGST Law)

(2) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised downwards on or after the appointed day, the registered taxable person who had sold such goods may issue to the recipient a supplementary invoice or credit note, containing such particulars as may be prescribed,

within thirty days of such price revision and for the purposes of this Act such supplementary invoice or credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

PROVIDED that the said registered taxable person shall be allowed to reduce his tax liability on account of issue of the said invoice or credit note only if the recipient of the invoice or credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(SGST Law)

179. Pending refund claims to be disposed of under earlier law

Every claim for refund filed by any person before or after the appointed day, for refund of any amount of cenvat credit, duty, tax or interest paid before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):

PROVIDED that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse:

PROVIDED FURTHER that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(CGST Law)

Every claim for refund filed by any person before or after the appointed day, for refund of any amount of input tax credit, tax and interest paid before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be refunded to him in accordance with the provisions of the said law:

PROVIDED that where any claim for refund of amount of input tax credit is fully or partially rejected, the amount so rejected shall lapse:
PROVIDED FURTHER that no refund claim shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(SGST Law)

180. Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law

Every claim for refund of any duty or tax paid under earlier law, filed after the appointed day, for the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of earlier law:
PROVIDED that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse:
PROVIDED FURTHER that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(CGST Law)

181. Refund claims filed after the appointed day for payments received and tax deposited before the appointed day in respect of services not provided

Every claim for refund of tax deposited under the earlier law in respect of services not provided, filed after the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944 (1 of 1944).

(CGST Law)

182. Claim of cenvat credit to be disposed of under the earlier law

(1) Every proceeding of appeal, revision, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and shall not be admissible as input tax credit under this Act:

PROVIDED that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(2) Every proceeding of appeal, revision, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law, and if any amount of credit becomes recoverable as a result of appeal, revision, review or reference, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(CGST Law)

(1) Every proceeding of appeal, revision, review or reference relating to a claim for input tax credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law, and any amount of credit found to be admissible to the claimant shall be refunded to him in accordance with the provisions of the earlier law and shall not be admissible as input tax credit under this Act:

PROVIDED FURTHER that no refund claim shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(2) Every proceeding of appeal, revision, review or reference relating to recovery of input tax credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law, and if any amount of credit becomes recoverable as a result of appeal, revision, review or reference, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(SGST Law)

183. Finalization of proceedings relating to output duty or tax liability

(1) Every proceeding of appeal, revision, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

(2) Every proceeding of appeal, revision, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944and shall not be admissible as input tax credit under this Act.

(CGST Law)

(1) Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions

of the earlier law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

(2) Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and any amount found to be admissible to the claimant shall be refunded to him in accordance with the provisions of the earlier law and shall not be admissible as input tax credit under this Act.

(SGST Law)

184. Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings

(1) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person after the appointed day, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(CGST Law)

(1) Where in pursuance of an assessment proceedings instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person after the appointed day, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(SGST Law)

(2) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes

refundable to the taxable person, the same shall be refunded to him in cash under the earlier law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

(CGST Law)

(2) Where in pursuance of an assessment proceeding instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in accordance with the provisions of earlier law.

(SGST Law)

185. Treatment of the amount recovered or refunded pursuant to revision of returns

(1) Where any return, furnished under the earlier law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of cenvat credit is found to be inadmissible, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(CGST Law)

(1) Where any return, furnished under the earlier law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of input tax credit is found to be inadmissible, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(SGST Law)

(2) Where any return, furnished under the earlier law, is revised after the appointed day but within the time limit specified for such revision under the earlier law and if, pursuant to such revision, any amount is found to be refundable or cenvat credit is found to be

admissible to any taxable person, the same shall be refunded to him in cash under the earlier law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

(CGST Law)

(2) Where any return, furnished under the earlier law, is revised after the appointed day but within the time limit specified for such revision under the earlier law and if, pursuant to such revision, any amount is found to be refundable or input tax credit is found to be admissible to any taxable person, the amount shall be refunded to the said person in accordance with the provisions of the earlier law.

(SGST Law)

186. Treatment of long term construction / works contracts

The goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(CGST Law)

The goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(SGST Law)

187. Progressive or periodic supply of goods or services

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day where the consideration, whether in full or in part, for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

(CGST Law)

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after

the appointed day for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

(SGST Law)

188. Taxability of supply of services in certain cases

Notwithstanding anything contained in section 13 or 14, the tax in respect of the taxable services shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day.

Explanation: Where the portion of the supply of services is not covered by this section, such portion shall be liable to tax under this Act.

(CGST law)

Notwithstanding anything contained in section 13 or 14, the tax in respect of the taxable services shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day.

Explanation: Where the portion of the supply of services is not covered by this section, such portion shall be liable to tax under this Act.

(SGST law)

189. Taxability of supply of goods in certain cases

Notwithstanding anything contained in section 12 or 14, the tax in respect of the taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such goods arose before the appointed day.

Explanation: Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under this Act.

(CGST law)

Notwithstanding anything contained in section 12 or 14, the tax in respect of the taxable goods shall be payable under the earlier law

to the extent the point of taxation in respect of such goods arose before the appointed day.

Explanation: Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under this Act.

(SGST law)

190. Credit distribution of service tax by ISD

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoice(s) relating to such services is received on or after the appointed day.

(CGST Law)

191. Provision for transfer of unutilized Cenvat Credit by taxable person having centralized registration under the earlier law

Where a taxable person having centralized registration under the earlier law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of cenvat credit carried forward in a return, furnished under the earlier law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

PROVIDED that if the taxable person files his return for the period ending with the day immediately preceding the appointed day within 3 months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

PROVIDED FURTHER that the taxable person shall not be allowed to take credit unless the said amount admissible as input tax credit under this Act:

PROVIDED ALSO that such credit may be transferred to any of the registered taxable persons having the same PAN for which the centralized registration was obtained under the earlier law.

(CGST Law)

192. Tax paid on goods lying with agents to be allowed as credit

Where any goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such goods subject to fulfilment of the following conditions:

(i) the agent is a registered taxable person under this Act;

(ii) both the principal and the agent declare the details of stock of goods lying with such agent on the date immediately preceding the appointed

day in such form and manner and within such time as may be prescribed in this behalf;

(iii) the invoices for such goods had been issued not earlier than twelve months immediately preceding the appointed day; and

(iv) the principal has either reversed or not availed of the input tax credit in respect of such goods.

(Only in SGST Law)

193. Tax paid on capital goods lying with agents to be allowed as credit

Where any capital goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such capital goods subject to fulfillment of the following conditions:

(i) the agent is a registered taxable person under this Act;

(ii) both the principal and the agent declare the details of the stock of capital goods lying with such agent on the date immediately preceding the appointed day in such form and manner and within such time as may be prescribed in this behalf;

(iii) the invoices for such capital goods had been issued not earlier than twelve months immediately preceding the appointed day; and

(iv) the principal has either not availed of the input tax credit in respect of such capital goods or, having availed of such credit, has reversed the said credit, to the extent availed of by him.

(Only in SGST Law)

194. Treatment of branch transfers

Notwithstanding anything to the contrary contained in this Act, any amount of input tax credit reversed prior to the appointed day shall not be admissible as credit of input tax under this Act.

(Only in SGST Law)

195. Goods sent on approval basis returned on or after the appointed day

Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period of six months or the extended period, as the case may be, from the appointed day:

PROVIDED ALSO that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period of six months or the extended period , as the case may be, from the appointed day.

(SGST Law)

196. Deduction of tax source

Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the earlier law and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 46 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

197. Transitional provisions for availing Cenvat credit in certain cases

Where any Cenvat credit availed for the input services provided under the earlier law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed provided that the taxable person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(CGST Act)

SCHEDULE I – Supply without consideration

MATTERS TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

[IN TERMS OF CLAUSE (c) OF SUBSECTION (1) OF SECTION 3]

1. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.
3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business. ***

SCHEDULE II - Goods or services

MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES

1. Transfer

(a) Any transfer of the title in goods is a supply of goods.

(b) Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services.

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

2. Land and Building

(a) Any lease, tenancy, easement, licence to occupy land is a supply of services.

(b) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

(a) Any treatment or process which is being applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

(b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for

a consideration, the usage or making available of such goods is a supply of services.

(c) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. The following shall be treated as "supply of service"

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.

Explanation.- For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:–

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure*;*

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(f) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(g) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and

(h) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

6. The following shall be treated as supply of goods

(a) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III - Neither goods not services

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any Court or Tribunal established under any law for the time being in force.
3.

(a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services by a foreign diplomatic mission located in India.
5. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

SCHEDULE IV - CG and SG exemptions

ACTIVITIES OR TRANSACTIONS UNDERTAKEN BY THE CENTRAL GOVERNMENT, A STATE GOVERNMENT OR ANY LOCAL AUTHORITY WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services provided by a Government or local authority to another Government or local authority excluding the following services:
   (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services;
   (ii) services in relation to an aircraft or a vessel , inside or outside the precincts of a port or an aircraft; or (iii) transport of goods or passengers.
2. Services provided by a Government or local authority to individuals in discharge of its statutory powers or functions such as-
   (i) issuance of passport, visa, driving licence, birth certificate or death certificate; and
   (ii) assignment of right to use natural resources to an individual farmer for the purpose of agriculture.
3. Services provided by a Government or local authority or a governmental authority by way of:
   (i) any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution;
   (ii) any activity in relation to any function entrusted to a Panchayat under article 243 G of the Constitution; (iii) health care; and (iv) education.
4. Services provided by Government towards-
   (i) diplomatic or consular activities;
   (ii) citizenship, naturalization and aliens;
   (iii) admission into , and emigration and expulsion from India;
   (iv) currency , coinage and legal tender , foreign exchange;
   (v) trade and commerce with foreign countries , import and export across customs frontiers , interstate trade and commerce; or

(vi) maintenance of public order.

5. Any services provided by a Government or a local authority in the course of discharging any liability on account of any tax levied by such Government or authority.
6. Services provided by a Government or a local authority by way of -
   (i) tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; or
   (ii) assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016:

PROVIDED that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource:

7. Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges (MOT).
8. Services provided by Government or a local authority by way of-
   (i) registration required under any law for the time being in force; or
   (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.

Definitions:

1. Governmental Authority means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W or a Panchayat under article 243G of the Constitution.
2. Health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or

pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

3. Education services means services by way of—
   i) pre-school education and education up to higher secondary school or equivalent;
   ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; or
   iii) education as a part of an approved vocational education course.

SCHEDULE V – Person liable to be registered

PERSONS LIABLE TO BE REGISTERED

1. Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds twenty lakh rupees:

   PROVIDED that where such person makes taxable supplies of goods and/or services from any of the States specified in sub-clause (g) of clause (4) of Article 279A of the Constitution, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

   (Other than Special Category States)

2. Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds ten lakh rupees:

   (Special Category States)

Explanation 1.- The aggregate turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

Explanation 2.- The supply of goods, after completion of job-work, by a registered jobworker shall be treated as the supply of goods by the "principal" referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

2. The following persons shall not be liable to registration –

   (a) any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax under this Act;

   (b) an agriculturist, for the purpose of agriculture.

3. Subject to the provisions of paragraph 1, every person who, on the day immediately preceding the appointed day, is registered or holds a

license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day.

4. Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

5. Notwithstanding anything contained in paragraph 1 and 3 above, in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, where required, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

6. Notwithstanding anything contained in paragraph 1 and 3 above, the following categories of persons shall be required to be registered under this Act:

   (i) persons making any inter-State taxable supply, irrespective of the threshold specified under paragraph 1;

   (ii) casual taxable persons, irrespective of the threshold specified under paragraph 1;

   (iii) persons who are required to pay tax under reverse charge, irrespective of the threshold specified under paragraph 1;

   (iv) persons who are required to pay tax under sub-section (4) of section 8, irrespective of the threshold specified under paragraph 1;

   (v) non-resident taxable persons, irrespective of the threshold specified under paragraph 1;

   (vi) persons who are required to deduct tax under section 46, whether or not separately registered under this Act;

   (vii) persons who are required to collect tax under 56, whether or not separately registered under the Act;

(viii) persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise, irrespective of the threshold specified under paragraph 1;

(ix) input service distributor, whether or not separately registered under the Act;

(x) persons who supply goods and/or services, other than supplies specified under sub-section (4) of section 8 , through such electronic commerce operator who is required to collect tax at source under section 56, irrespective of the threshold specified in paragraph 1;

(xi) every electronic commerce operator, irrespective of the threshold specified in paragraph 1;

(xii) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person; and

(xiii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendation of the Council.

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5. Integrated Goods And Services Tax Act, 2016

CHAPTER– I
PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Integrated Goods and Services Tax Act, 2016.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

Author's comments: At present inter-State supply of goods attract Central Sales Tax. Now, it provides that an inter-State supply of goods and/ or services will attract IGST (i.e. CGST plus SGST). Thus, it would be crucial to determine whether a transaction is a 'intra-State' or 'Inter-State' as taxes will be applicable accordingly.

In this regard, the draft GST law provides separate provisions, as part of Integrated GST Act (IGST), which will help an assesse determine the place of supply for goods and services. At the outset it may be relevant to note that as Place of Supply provisions of part of IGST Act (than CGST/ SGST Act) there is likely to be uniformity in application of Place of Supply provisions throughout India.

2. Definitions

In this Act, unless the context otherwise requires,-

(1) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(2) "appropriate State", in relation to a taxable person, means that State where he is registered or liable to be registered under section 23 of the Central Goods and Services Tax Act, 2016.

Explanation: For the purpose of this Act, "State" includes Union Territory with Legislature;

(3) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(4) "customs frontiers of India" means the limits of the area of a customs station as defined in section 2 of the Customs Act, 1962 (52 of 1962) in which imported goods are ordinarily kept before clearance by customs authorities;

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

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

(a) the supplier of service is located in India,

(b) the recipient of service is located outside India,

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

(d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and

(e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 5;

Authors' comments: To qualify any service as export of service required to satisfy five conditions as given in the aforesaid definition. As per clause (c) the place of supply of service shall be outside India. Chapter IV of the Model Law of GST contain provision to determine the Place of Supply of service.

This definition is similar to Rule 6A of the Service Tax Rules, 1994.

(7) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(8) "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;

(9) "**Government**" means the Central Government;

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

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

(a) the supplier of service is located outside India,

(b) the recipient of service is located in India, and

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

Author comments: As per section 3 of GST Act, 'Importation of service' is liable to GST. In GST regime, similar to current Service Tax law, the person liable to pay GST in case of import of service would be the service recipient in India (than the service provider located outside India).

Further, it appears that in case the supplier of service and the recipient of service are merely establishments of a distinct person (such as head office and branch office) then the transactions between them may **qualify as import of service'.**

(12) "**India**" means,-

(a) the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(13) "**intermediary**" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of a service (hereinafter called the 'main' service) or the supply of goods, between two or more persons, but does not include a person who supplies the main service or supplies the goods on his account;

Author comments: The intermediary is defined in the similar manner as defined at present for the purpose of service tax. The place of supply rules for the intermediary given separately in Chapter –IV.

(14) "Integrated Goods and Services Tax" (IGST) means tax levied under this Act on the supply of any goods and/or services in the course of inter-State trade or commerce;

(15) "input tax" in relation to a taxable person, means the Integrated Goods and Services Tax, including that on import of goods, Central Goods and Services Tax or State Goods and Services Tax, as the case may be, charged on any supply of goods and/or services to him and includes the tax payable under sub-section (2) of section 5, but does not include the tax paid under section 9 of the CGST/SGST Act;

(16) "input tax credit" means credit of 'input tax' as defined in sub-section (15);

(17) "**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;

(18) "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;

Author comments: Identification of location of recipient and supplier of service is necessary to determine the place of supply of service and also it helps to know whether certain supply of service is intrastate and interstate supply.

At present, service tax law is a central levy and hence there is no need to determine whether provision of service is intra-State or inter-State. However, under GST regime Intra-State supply of service liable to CGST and SGST whereas inter-State supply of service will be liable to IGST. Accordingly, it's important to identify the supply as interstate supply or interstate supply for the purpose of correct levy of the tax.

(19) "non-banking financial company" means-

(a) a financial institution which is a company;

(b) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme

or arrangement or in any other manner, or lending in any manner; or

(c) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;

(20) "**non-taxable online recipient**" means Government, a local authority, a governmental authority, an individual or any person not registered under section 23 of the CGST Act, 2016 receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory;

Explanation: For the purposes of this clause, "governmental authority" means an authority or a board or any other body:

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

(ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

(21) "**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 essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as,-

(a) advertising on the internet;

(b) providing cloud services;

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

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

(e) online supplies of digital content (movies, television shows, music, etc.);

(f) digital data storage; and

(g) online gaming;

Author comments: The definition is inclusive. Accordingly, it may include all similar transaction as given in the aforesaid definition. Further, the Chapter IV specifically provides that separate provision with respect to place of provision of supply for "online information and database access or retrieval services"

(22) "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, provides or receives goods and/or services;

(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;

(23) "special economic zone'' shall have the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(24) "SEZ developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 of the Special Economic Zones Act, 2005 (28 of 2005) and includes an Authority and a Co-Developer as defined under section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(25) "State" means------

(26) "supply" has the same meaning as assigned to it in section 3 of the CGST Act, 2016;

(27) "**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;

(28) "output tax" in relation to a taxable person, means the IGST chargeable under the Act on taxable supply of goods and/or services made by him or his agent and excludes tax payable by him on reverse charge basis;

(29) "zero-rated supply" shall have the meaning assigned to it under section 15; and

(30) Words and expressions not defined in this Act shall have the meaning assigned to them in the **Central Goods and Service Tax Act**, 2016.

CHAPTER- II

PRINCIPLES FOR DETERMINING SUPPLY OF GOODS AND/OR SERVICES IN THE COURSE OF INTER-STATE TRADE OR COMMERCE

3. Supplies of goods and/or services in the course of inter-State trade or commerce

(1) Subject to the provisions of section 7, supply of goods in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States.

(2) Subject to the provisions of section 9, supply of services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States.

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

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

(5) Supply of goods and/or services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(6) Supply of goods and/ or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

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

Author comments:

Inter-State trade or commerce is defined to mean any supply where the 'location of the supplier' and the 'place of supply' are in the different state. Thus, to determine whether particular supply is intra-State or inter-State will be determined on the basis of location of the supplier and place of supply as per IGST Act. In addition to this the supply given below shall be treated as Inter-State Supply of the Goods and /or Services:

- Supply of Goods in the course of Import
- Supply of Services in the course of Import
- Supply of the Goods and/or Services where Supplier is located in the India and Place of supply is Outsider India
- Supply of the Goods and/or Services to or by a SEZ Developer or SEZ Unit.
- Any supply of Goods and/or Services other than Intra-State Supply and not covered elsewhere in the Act.

Accordingly, IGST will be payable on aforesaid transaction by deeming these transaction as as inter-State supplies.

It may be noted that the Model GST law (refer section 70 of CGST/SGST Act and section 19 of IGST Act) provides that if an assessee wrongly pays say IGST (on a belief that the transaction is inter-State) instead of CGST plus SGST, then the assessee will have to pay the correct taxes i.e. CGST plus SGST and claim refund of wrongly IGST. Thus, determining each transaction to be 'intra-State' supply or an 'Inter-State' as GST could be very crucial in GST regime.

4. Supplies of goods and/or services in the course of intra-State trade or commerce

(1) Subject to the provisions of section 7, intra-State supply of goods means any supply of goods where the location of the supplier and the place of supply are in the same State:

PROVIDED that the intra-State supply of goods shall not include:

(i) supply of goods to or by a SEZ developer or to or by an SEZ unit;

(ii) supply of goods brought into India in the course of import till they cross the customs frontiers of India.

(2) Subject to the provisions of section 9, intra-State supply of services means any supply of services where the location of the supplier and the place of supply are in the same State:

PROVIDED that the intra-State supply of services shall not include supply of services to or by a SEZ developer or to or by an SEZ unit.

Author comments:

Intra-State trade or commerce is defined to mean any supply where the 'location of the supplier' and the 'place of supply' are in the same state. Further, the supply given below shall not be treated as Intra-State Supply of the Goods and /or Services.

- Supply of the Goods and/or Services to or by a SEZ Developer or SEZ Unit.

- Supply of Goods brought into India in the course of import till they cross the customs frontiers of India.

It may be noted that the aforesaid transaction are only governed by the IGST Act and all the provisions of the IGST act is only applicable to aforesaid transaction as specifically excluded from Intra-State Supply

CHAPTER– III
LEVY AND COLLECTION OF TAX

5. Levy and collection of Integrated Goods and Services Tax

(1) There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made **in the course of inter-State trade or commerce** on the **value** determined under section 15 of CGST Act, 2016 and at such rates as may be notified by the Central Government in this behalf, but **not exceeding twenty eight percent**, on the recommendation of Council and collected in such manner as may be prescribed and shall be paid by every taxable person in accordance with the provisions of this Act.

PROVIDED that the Integrated Goods and Services 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 (51 of 1975) at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962), on a value as determined under the first mentioned Act.

(2) The Central Government may, on recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the recipient of such goods and/or services 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 and/or services.

(3) The Central Government may, on the recommendation of the Council, by notification, specify categories of services the tax on 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 person 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 he 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.

Explanation1: For the purposes of this Act,-

(i) an **establishment of a person in India and any of his other establishments outside India**, or

(ii) an **establishment of a person in a State and any of his other establishments outside that State**,

shall be treated as establishments of distinct persons.

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

Author comments:

IGST shall be levied on

- All **supplies** of goods and/or services made in the course of **inter-State trade or commerce**
- On the **value** determined under **section 15 of CGST Act, 2016** and
- At such rates as may be notified by the Central Government in this behalf, but not exceeding **twenty eight percent**

Further, IGST on the goods imported in to India shall be levied and collected in accordance with the provisions of the Section 3 of the Custom Tariff Act, 1975 at the time when duties of the custom are levied.

6. Power to grant exemption from tax

(1) Any exemption granted by the Central Government on the recommendation of the Council, under section 11 of the CGST Act in respect of intra-State supply of goods and/or services of any specified description, **shall apply *mutatis mutandis* to inter-State supply** of goods and/or services of the said description unless specifically provided otherwise.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt **generally either absolutely** or subject to such conditions as may be specified in the notification, inter-State supply of goods and/or services of any specified description from the whole or any part of the tax leviable thereon.

Explanation: Where an exemption in respect of any goods and/or services from the whole of the tax leviable thereon has been granted **absolutely**, the taxable person providing such goods and/or services **shall not pay** the tax on such goods and/or services.

(3) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by **special order** in each case, exempt from payment of

tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

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

(5) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall

(a) come into force on the date of its issue by the Central Government for publication in the Official Gazette or from any date subsequent to the date of its issue as may be specified therein; and

(b) be made available on the official website of the department of the Central Government.

Author comments: Section 6 of the revised draft law provides the power to grant exemption. Further, any exemption granted by the Central Government under Section 11 of the CGST Act for Intra-State Supply shall *mutatis mutandis* apply to the inter-State supply.

CHAPTER– IV
PLACE OF SUPPLY OF GOODS AND/OR SERVICES

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

(1) The provisions of this section shall apply to determine the place of supply of goods other than supply of goods imported into, or exported from India.

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

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

(4) Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.

(5) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

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

(7) Where the place of supply of goods cannot be determined in terms of subsection (2), (3), (4), (5) or (6), the same shall be determined in a manner prescribed by the Central Government on the recommendation of the Council.

Author comments: Section 7 of specify the provisions to determine the Place of supply of **goods other than supply of goods imported into, or exported from India**

Particulars	**POS**
Supply involves movement of goods	Location of the goods at which movement of goods terminates for delivery

Goods delivered on the direction of the third person.	Principal place of the business of such person.
Does not involve movement of goods	Location of the goods at the time of delivery
Goods assembled and installed at site	Place of installation or assembly
Goods supplied on the board or Conveyance	Location at which such goods taken on board
Cannot be determined as aforesaid	Determined in the manner Prescribed

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

(1) The place of supply of goods imported into India shall be the location of the importer.

(2) The place of supply of goods exported from India shall be the location outside India.

9. Place of supply of services where the location of supplier of service and the location of the recipient of service is in India

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

(2) The place of supply of services, except the services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to a registered person shall be the location of such person.

(3) The place of supply of services, except the services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14)

and (15), made to any person other than a registered person shall be

(a) the location of the recipient where the address on record exists, and

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

(4) The place of supply of services, -

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

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

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

(d) any services ancillary to the services referred to in clause (a), (b) and (c), shall be the location at which the immovable property or boat or vessel is located or intended to be located:

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

Explanation: Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such

contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

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

(6) The place of supply of services in relation to training and performance appraisal to

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

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

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

(8) The place of supply of services provided by way of—

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

(b) services ancillary to organization of any of the above events or services, or assigning of sponsorship of any of the above events, to

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

(ii) a person other than a registered person, shall be the place where the event is actually held:

PROVIDED that if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation: Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so

provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

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

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

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

(10) The place of supply of passenger transportation service to

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

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

PROVIDED that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (*2*) or (*3*), as the case may be.

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

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

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

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

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

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

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

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

(d) in other cases not covered in (b) and (c) above, shall be the address of the recipient as per records of the supplier of the service:

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

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

Explanation: Where the leased circuit is installed in more than one State and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

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

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

(14) The place of supply of insurance services shall:

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

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

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

Author comments: Section 9 of specify the provisions to determine the Place of supply of **of services where location of the suppler of the service and location of the recipient of service is in India.** In this regard, the Place of supply of services, except the services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made

- To a registered person shall be the location of such person.
- To any person other than a registered person shall be

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

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

Sub Section 4 to 15 provide specific provisions and the business will have to scroll through all the place of supply provisions before determining the place of supply where location of the suppler of the service and location of the recipient of service is in India..

10. Place of supply of services where the location of the supplier or the location of the recipient is outside India

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

(2) The place of supply of services except the services specified in subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) shall be the location of the recipient of service:

PROVIDED that in case the location of the recipient of service is not available in the ordinary course of business, the place of supply shall be the location of the supplier of service.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:-

(a) services supplied in respect of goods that are required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the service:

PROVIDED that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of service:

PROVIDED FURTHER that this clause shall not apply in the case of a service supplied in respect of goods that are temporarily imported into India for repairs and are exported after repairs without being put to any use in India, other than that which is required for such repairs;

(b) services supplied to an individual, represented either as the recipient of service or a person acting on behalf of the recipient,

which require the physical presence of the receiver or the person acting on behalf of the recipient, with the supplier for the supply of the service.

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

(5) The place of supply of services supplied by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

(6) Where any service referred to in sub-sections (3), (4), or (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided.

(7) Where the services referred to in sub-sections (3), (4), (5) or (6) are supplied in more than one State, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(8) The place of supply of following services shall be the location of the supplier of service:-

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport other than aircrafts and vessels except yachts, upto a period of one month.

Explanation.- For the purpose of this section, the expression "goods" shall include 'securities' as defined in sub-section (90) of section 2 of the CGST Act, 2016.

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

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

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

(12) (a) The place of supply of the "online information and database access or retrieval services" services shall be location of recipient of service.

(b) For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory if any two of the following non-contradictory conditions are satisfied, namely:-

(i) the location of address presented by the recipient of service via internet is in taxable territory;

(ii) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;

(iii) the billing address of recipient of service is in the taxable territory;

(iv) the internet protocol address of the device used by the recipient of service is in the taxable territory;

(v) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;

(vi) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;

(vii) the location of the fixed land line through which the service is received by the recipient is in taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Author comments: Section 10 (2) provides that the generic place of supply of services will be **location of:**

- **The suppler of the service is outside India. and**
- **The recipient of service is outside India.**

In this regard, the place of supply of services, except the services specified in sub-sections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) shall be the location of the **recipient of service.**

Sub-section (3) to (15) gives specific proviso which clarify what will be criteria for determining place of supply of services. Further it is important to note that supply of services will be zero rated only if qualify as export of services as defined under section 2(6) of the IGST Act by satisfying all 5 conditions. Out of the 5 conditions one of the condition is that the Place of Supply shall be outside India. Hence Sec. 10 becomes very important because even if the recipient is outside India, if the place of supply is not outside India it will not be zero rated. Hence, the business will have to scroll through all the place of supply

provisions before determining the place of supply where location of the supplier of the service and location of the recipient of service is outside India.

CHAPTER-V

PAYMENT OF TAX

11. Payment of tax, interest, penalty and other amounts

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by internet banking or by using credit/debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by any other mode, subject to such conditions and restrictions as may be prescribed in this behalf, shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

Explanation: The date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit in the electronic cash ledger.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger, in accordance with section 36 of the CGST Act, 2016 to be maintained in the manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax payable under the provisions of the Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(5)

(a) The amount of input tax credit on account of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.

(b) The amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The amount of input tax credit on account of SGST available in the electronic credit ledger shall first be utilized towards payment of SGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(6) The balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the rules made thereunder may be refunded in accordance with the provisions of section 48 of the CGST Act, 2016 and the amount collected as IGST shall stand reduced to that extent.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order:

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under the Act or the rules made thereunder including the demand determined under section 66 and 67 of the CGST Act, 2016.

(9) Every person who has paid the tax on goods and/or services under this Act shall, unless the contrary is proved by him, be deemed to

have passed on the full incidence of such tax to the recipient of such goods and/or services.

Explanation: For the purposes of this section, the expression "tax dues" means the tax payable under this Act and does not include interest, fee and penalty.

Author comments: This section provides for payment of tax, interest, penalty and other amounts (such as late fees for delayed return). In this regard, section provides for mechanism to pay the liability through cash and credit.

Electronic cash ledger

The amount available in the electronic cash ledger may be used for making any payment towards:

a. Tax

b. Interest

c. Penalty

d. Fees or any other amount payable under the provisions of the Act or rules

Electronic credit ledger

The amount available in the electronic cash ledger may be used for making any payment towards **tax.** The manner of utilisation of credit for tax payment is provided as under:

Credit of	Utilisation
IGST	First against IGST then against CGST and later against SGST
CGST	First against CGST then against IGST
SGST	First against SGST then against IGST

12. Special provision for payment of tax by a supplier of online information and database access or retrieval services located outside India to specified person in the taxable territory

(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by non-taxable online recipient the supplier of service located in a non-taxable territory shall be the person liable for paying IGST:

PROVIDED that in case the supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by nontaxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates provision of such service, shall be deemed to be receiving such services from the service provider in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies all 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 i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assesse online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorise delivery;

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider.

(2) The supplier of online information and database access or retrieval services referred in sub-section (1) shall, for payment of IGST, take

a single registration under a Simplified Registration Scheme as may be prescribed:

PROVIDED that any person located in taxable territory representing such supplier for any purpose in the taxable territory shall take a registration and pay IGST 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 IGST and such person shall be liable for paying IGST.

CHAPTER– VI
INPUT TAX CREDIT

13. Claim of input tax credit, provisional acceptance, matching, reversal and reclaim of input tax credit or reduction in output tax liability

(1) Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax, as self-assessed, in his return and such amount shall be credited, on a provisional basis, to his electronic credit ledger to be maintained in the manner as may be prescribed.

(2) The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax liability as per the return referred to in sub-section (1).

(3) The provisions of section 37 and 38 of the CGST Act, 2016 relating to matching, reversal and reclaim of input tax credit or reduction in output tax liability shall apply *mutatis mutandis* to the matching, reversal and reclaim of input tax credit or reduction in output tax liability under this section.

14. Transfer of input tax credit

(1) On utilization of input tax credit availed under this Act for payment of tax dues under the CGST Act as per sub-section (5) of section 11, the amount collected as IGST shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the CGST account in the manner and time as may be prescribed.

(2) On utilization of input tax credit availed under this Act for payment of tax dues under the SGST Act as per sub-section (5) of section 11, the amount collected as IGST shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the appropriate State government and the Central Government shall transfer the amount so apportioned to account of the appropriate State Government in the manner and time as may be prescribed.

CHAPTER- VII APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS

15. Apportionment of tax collected under the Act and settlement of funds

(1) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services to an unregistered person or to a taxable person paying tax under section 9 of the CGST Act, 2016 the amount of tax calculated at the rate equivalent to the CGST on similar intra-state supply shall be apportioned to the Central Government.

(2) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services where such taxable person is not eligible for input tax credit, the amount of tax calculated at the rate equivalent to the CGST on similar intraState supply shall be apportioned to the Central Government.

(3) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services made in a year to a registered taxable person, where he does not avail of the said credit within the specified period and thus remains in the IGST account after expiry of the due date for filing of annual return for such year in which the supply was made, the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(4) Out of the IGST paid to the Central Government in respect of import of goods and / or services by an unregistered person or by a taxable person paying tax under section 9 of the CGST Act, 2016 the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(5) Out of the IGST paid to the Central Government in respect of import of goods and / or services, where the such taxable person is not eligible for input tax credit, the amount of tax calculated at the rate equivalent to the CGST on similar intraState supply shall be apportioned to the Central Government.

(6) Out of the IGST paid to the Central Government in respect of import of goods and / or services made in a year by a registered taxable person, where he does not avail of the said credit within the specified period and thus remains in the IGST account after expiry of the due date for filing of annual return for such year in which the supply was received, the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(7) The balance amount of tax remaining in the IGST account in respect of the supply for which an apportionment to the Central Government has been done under subsection (1), (2), (3), (4), (5) or (6) shall be apportioned to the State where such supply takes place as per sections 7, 8, 9 or 10:

PROVIDED that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to each of the States to which such taxable person has made supplies during the financial year in the proportion of the total supplies made to each of such States:

PROVIDED FURTHER that where the taxable person making such supplies cannot be determined, the said balance amount shall be apportioned to all States as per the order made by the President under clause (2) of Article 270.

(8) The provisions of sub-sections (1), (2), (3), (4), (5), (6) and (7) relating to apportionment of tax shall *mutatis mutandis* apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.

(9) Where an amount has been apportioned to the Central Government or a State Government under sub-sections (1), (2), (3), (4), (5), (6), (7) and (8) the amount collected as IGST shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the CGST account an amount equal to an amount apportioned to the Central Government and shall transfer to the SGST account of the State an amount equal to an amount apportioned to that State, in the manner and time as may be prescribed.

(10) Any IGST amount apportioned to a State, if subsequently found refundable to any person and refunded to such person, shall be reduced from the amount apportioned to such State under this section or otherwise, in the manner and time as may be prescribed.

Chapter VIII

ZERO RATED SUPPLY

16. Zero rated supply

(1) "zero rated supply" means any of the following taxable supply of goods and/or services, namely -

(a) export of goods and/or services; or

(b) supply of goods and/or services to a SEZ developer or an SEZ unit.

(2) Subject to provisions of sub-section (3) of section 17 of the CGST Act, 2016, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered taxable person exporting goods or services shall be eligible to claim refund under one of the following two options, namely -

(a) a registered taxable person may export goods or services under bond, subject to such conditions, safeguards and procedure as may be prescribed in this regard, without payment of IGST and claim refund of unutilized input tax credit in accordance with provisions of section 48 of the CGST Act, 2016 read with rules made thereunder;

(b) a registered taxable person may export goods or services, subject to such conditions, safeguards and procedure as may be prescribed in this regard, on payment of IGST and claim refund of IGST paid on goods and services exported in accordance with provisions of section 48 of the CGST Act, 2016 read with rules made thereunder.

(4) The SEZ developer or SEZ unit receiving zero rated supply specified in clause (a) of sub-section (1) shall be eligible, subject to the conditions, safeguards and procedure as may be prescribed in this regard, to claim refund of IGST paid by the registered taxable person on such supply.

Author comments: The revised draft law provides the concept of zero rated supply which include the supply of goods and/or services, namely

- Export of goods and/or services; or
- Supply of goods and/or services to a SEZ developer or an SEZ unit.

A registered taxable person exporting the goods or services shall be eligible for 2 option:

i) Claim the Refund of the unutilised Input Tax Credit

ii) Claim refund of the IGST paid

CHAPTER– IX MISCELLANEOUS

17. Application of certain provisions of the CGST Act, 2016

The provisions relating to registration, valuation, time of supply of goods, time of supply of services, change in rate of tax in respect of supply of goods or services, input tax credit and utilization thereof, distribution of input tax credit by an Input Service Distributor, job work, accounts and records, payment, tax deduction at source, return, tax collection at source, audit, assessment, adjudication, demands, refunds, interest, recovery of tax, offences and penalties, inspection, search and seizure, prosecution and power to arrest, appeals, review, advance ruling and compounding shall apply, so far as may be, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2016:

Provided that in the case of tax deduction at source, the deductor shall deduct tax at the rate of two percent from the payment made or credited to the supplier:

Provided further that in the case of tax collection at source, the operator shall collect tax at the rate of two percent of the value of net supplies.

18. Power to make rules

(1) The Central Government may, on the recommendation of the Council, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may

(a) provide for settlement of cases in accordance with Chapter XII of this Act;

(b) provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

19. Tax wrongfully collected and deposited with the Central or a State Government

(1) A taxable person who has paid IGST on a supply considered by him to be an inter-state supply, but which is subsequently found 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.

(2) A taxable person who has paid CGST / SGST on a transaction considered by him to be an intra-State supply, but which is subsequently found to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.

Author comment : It may be noted that section 19 (and section 70 of CGST/SGST Act) provides that if an assessee wrongly pays say IGST (on a belief that the transaction is inter-State) instead of CGST plus SGST, then the assessee will have to pay the correct taxes i.e. CGST plus SGST, and claim refund of wrongly paid IGST. Thus, correct determination of each transaction to be 'intra-State' supply or an 'Inter-State' as GST could be very crucial in GST regime.

20. Refund of IGST paid on supply of goods to outbound tourist

(1) The IGST paid on any supply of goods to outbound tourist shall be refunded, in the manner and subject to such conditions and safeguards as may be prescribed, if such goods are taken out of India.

(2) The refund under sub-section (1) shall be allowed only on such supply of goods that is procured from a registered taxable person who satisfies the conditions and complies with the requirement, including relating to issue of invoice in the prescribed manner.

CHAPTER– X
TRANSITIONAL PROVISIONS

21. Import of services or inter-State supply of goods and/or services made on or after the appointed day

Notwithstanding anything contained in section 12 and 13 of the CGST Act, 2016 import of services or inter-State supply of goods and/or services made after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services or inter-state supply had been initiated before the appointed day:

PROVIDED that if the tax on such import or inter-State supply had been paid in full under the earlier law, no tax shall be payable on such import or inter-state supply under this Act:

PROVIDED FURTHER that if the tax on such import of services had been paid in part under the earlier law, balance amount of tax shall be payable on such import or inter-state supply under this Act.

Explanation: For the purpose of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

CHAPTER- XI
ADMINISTRATION

22. Classes of officers under the Integrated Goods and Services Tax Act, 2016

(1) There shall be the following classes of officers under the Integrated Goods and Services Tax Act, 2016 namely;

(a) Principal Chief Commissioners of IGST or Principal Directors General of IGST,

(b) Chief Commissioners of IGST or Directors General of IGST,

(c) Principal Commissioners of IGST or Principal Additional Directors General of IGST,

(d) Commissioners of IGST or Additional Directors General of IGST,

(e) Additional Commissioners of IGST or Additional Directors of IGST,

(f) Joint Commissioners of IGST or Joint Directors of IGST,

(g) Deputy Commissioners of IGST or Deputy Directors of IGST,

(h) Assistant Commissioners of IGST or Assistant Directors of IGST, and

(i) such other class of officers as may be appointed for the purposes of this Act.

23. Appointment of officers under the Integrated Goods and Services Tax Act, 2016

(1) The Board may appoint such persons as it may think fit to be officers under the Integrated Goods and Services Tax Act, 2016.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Integrated Goods and Services Tax below the rank of Assistant Commissioner of Integrated Goods and Services Tax Act, 2016.

24. Appointment of Officers of SGST as proper officer in certain circumstances

The officers appointed under the SGST Acts shall, to such extent and subject to such conditions, as may be prescribed in the rules made in this behalf, be the proper officers for the purposes of sections (……..) of this Act.**]**

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6. Goods And Services Tax- Compensation Law, 2016

GOODS AND SERVICES TAX (COMPENSATION TO THE STATES FOR LOSS OF REVENUE) BILL, 2016
(No. __ of 2016)

A Bill to provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years as per Section 18 of The Constitution (One Hundred and First Amendment) Act, 2016.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. Short tile and Commencement

(1) This Act may be called the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Definitions

(1) "base year" shall have the meaning assigned to it in section 4;

Authors comments: As per Section 4 the financial year ending 31st March 2016 is taken as Base Year (F.Y. 15-16) .

(2) "base year revenue" shall have the meaning assigned to it in section 5;

(3) "compensation" means an amount determined under section 7;

(4) "earlier law" shall have the meaning assigned to it in the State Goods and Services Tax Act of the respective State;

(5) "Council" means Goods and Services Tax Council established as per the Article 279A of the Constitution;

(6) "Goods and Services Tax Compensation Cess" means the cess levied under section 8;

(7) "Goods and Services Tax Compensation Fund" shall have the meaning assigned to it in section 10;

(8) "input tax" in relation to a taxable person, means the Goods and Services Tax Compensation Cess charged on any supply of goods and/or services to him, Goods and Services Tax Compensation Cess charged on import of goods, and includes the Goods and Services Tax Compensation Cess payable on reverse charge basis;

(9) "input tax credit" means credit of 'input tax' as defined in section 2(8);

(10) "projected growth rate" means the rate of growth projected for the transition period as per section 3;

(11) "projected revenue" shall have the meaning assigned to it in section 6;

(12) "State" shall include Union Territories with Legislature;

(13) "taxable person'' shall have the meaning as assigned to it in the Central Goods and Services Tax Act, 2016;

(14) "taxable supply'' means a supply of goods and/or services which is chargeable to the Goods and Services Tax Compensation Cess under this Act;

(15) "transition date" shall mean, in respect of any State, the date on which the Goods and Services Tax Act of the concerned state comes into force;

(16) "transition period" means a period of five years from the transition date;

(17) words and expressions used but not defined in this Act and defined in the Central Goods and Services Tax Act, 2016 (… of 2016), shall have the meanings respectively assigned to them in that Act, in the context of GST Compensation Cess levied on taxable supplies of goods and/or services made in the course of intra-State trade or commerce; and

(18) words and expressions used but not defined in this Act and defined in the Integrated Goods and Services Tax Act, 2016 (… of 2016) shall

have the meanings respectively assigned to them in that Act, in the context of GST Compensation Cess levied on taxable supplies of goods and/or services made in the course of inter-State trade or commerce.

3. Projected Growth Rate

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be 14% per annum.

4. Base Year

For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March 2016 will be taken as the base year.

5. Base Year Revenue

(1) Subject to the provision of sub-sections (2), (3) (4) and (5) the base year revenue for a State shall be the sum of the revenue collected by the State and local bodies during the base year, on account of the taxes levied by the respective State or Centre, net of refunds, with respect to the following taxes imposed by the respective State or Centre, which are subsumed into goods and services tax:

(a) Value Added Tax (VAT), sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile Entry 54 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;

(b) Central Sales Tax (CST) levied by the Central Sales Tax Act, 1956;

(c) Entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile Entry 52 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;

(d) Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling or any other tax levied by the concerned State

under the erstwhile Entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;

(e) Taxes on advertisement or any other tax levied by the concerned State under the erstwhile Entry 55 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016;

(f) Duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile Article 268 of the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016; and

(g) Any cess or surcharge levied by the State Government under any Act which is included in the definition of 'earlier laws' as per section 2(39) of the State Goods and Services Act of the concerned State.

(2) The Acts of the Central and State Governments under which the specific taxes are being subsumed into the goods and services tax shall be as notified.

(3) The revenue collected during the base year in a State, net of refunds, on account of following taxes, shall not be included in the calculation of the base year revenue for that State:

(a) Any taxes levied under any Act made under the erstwhile Entry 54 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

(b) Any taxes levied under the Central Sales Tax Act, 1956 (74 of 1956) on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

(c) Any cess imposed by the State Government on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and

(d) Entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile Entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to bringing into effect the provisions of the Constitution (One Hundred and First Amendment) Act, 2016..

(4) In respect of the State of Jammu and Kashmir, the base year revenue shall include the amount of service tax collected by the State Government.

(5) In respect of States mentioned in article 279A(4)(g) of the Constitution, the amount of revenue foregone on account of exemptions given by the State Government to specific entities under the laws specified under sub-section (2) to promote industrial investment in the State would be included in the total base year revenue of the State, subject to the conditions as may be prescribed.

(6) The base year revenue shall be calculated as per sub-sections (1), (2), (3), (4) and (5) on the basis of the figures of revenue collected net of refunds given in that year, as audited by the Comptroller and Auditor General of India.

(7) In respect of any State, if any part of revenues mentioned in sub-sections (1), (2) and (3) are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to the conditions as may be prescribed.

Authors comments: Section 5 prescribe the methodology for the computation of the base year Revenue of each state. In this regard, the sum of the revenue collected by the State and local bodies during the FY 2015-16, on account of the taxes levied by the respective State or Centre, net of refunds shall be taken in to consideration. While computation of the Sum of the Tax the list state taxes which are to be subsumed (like Value Added Tax, Central Sales Tax, Octroi etc) given in the subsection 2 (a), (b), (c),(d),(e) and (f) of the section 5 of the bill. Also, subsection 3 (a), (b), (c), and (d), gives the list of the state tax (like sales tax on petroleum crude, high speed diesel, motor spirit) which is out the ambit of the base year revenue.

6. Projected Revenue for any Year

The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.

Illustration: If the base year revenue for 2015-16 for a concerned State, calculated as per section 5, is Rs. 100, then the projected revenue for, say, financial year 2018-19 shall be as follows:

$$2018-19 = 100 \times \left(1+\frac{14}{100}\right)$$

Author's comments: The Growth rate of 14% is considered for each year while computation of the Projected Revenue from the Base Revenue.

7. Calculation and Release of Compensation

(1) The GST compensation payable to a State shall be provisionally calculated and released at the end of every quarter, and shall be finally calculated for every financial year after the receipt of final revenue

figures, as audited by the Comptroller and Auditor General of India (CAG).

Provided further that in case any excess amount has been released as GST compensation to a State in any financial year during the transition period, as per the CAG audited figures of revenue collected, the excess amount so released shall be adjusted against the GST compensation amount payable to the State in the subsequent financial year.

(2) The total GST compensation payable for any financial year during the transition period to any State shall be calculated as follows:

(a) The projected revenue for any financial year during the transition period, that could have accrued to a State in the absence of GST, shall be calculated as per section 6.

(b) The actual revenue collected by a State in any financial year during the transition period would be the actual revenue from State Goods and Services Tax collected by the State, net of refunds given by the State under Chapter XI of the SGST Act, and the Integrated Goods and Services Tax apportioned to that State, as certified by the Comptroller and Auditor General of India.

(c) Total GST compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State as defined in sub-section (b).

(3) The loss of revenue at the end of any quarter in any year for a State during the transition period shall be calculated at the end of every quarter as follows:

(a) The projected revenue that could have been earned by the State in absence of GST till the end of the relevant quarter of the respective financial year would be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, as calculated as per section 6.

(Illustration: If the projected revenue for any year calculated as per section 6 is Rs. 100, the projected revenue that could be earned till the end of third quarter for the purpose of this sub-section shall be Rs. 75.)

(b) The actual revenue collected by a State till the end of relevant quarter in any financial year during the transition period would be the actual revenue from State Goods and Services Tax collected by the State, net of refunds given by the State under Chapter XI of the SGST Act, including Integrated Goods and Services Tax apportioned to that State, as certified by the Principal CCA (CBEC).

(c) The provisional GST compensation payable to any State at the end of the relevant quarter in any financial year shall be the difference between the projected revenue for till the end of the relevant period as per sub-section (3)(a) and the actual revenue collected by a State in the said period as defined in sub-section (3)(b), reduced by the provisional GST compensation paid to a State till the end of the previous quarter in the said financial year during the transition period.

(4) In case of any difference between the final GST compensation amount payable to a State calculated as per provisions of sub-section (2) upon receipt of the audited revenue figures from the CAG, and the total provisional GST compensation amount released to a State in the said financial year as per sub-section (3), the same shall be adjusted against release of GST compensation to the State in the subsequent financial year.

(5) Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the GST Compensation Fund in a manner as may be prescribed.

Explanation.— For the purpose of this section, the actual revenue collected would include the collection on account of SGST net of refunds of SGST given by the State under Chapter XI of the concerned SGST Act, and any collection of taxes on account of the taxes levied by the respective State under the laws specified under section 5(2), net of refunds of such taxes.

Author's comments: Section 7 prescribe the methodology for the distribution of the compensation to the state. The GST compensation payable to a State shall be provisionally calculated and released at the end of every quarter, and at the end of every financial year it is finally after the receipt of final revenue figures. If at the end of the year excess amount has been released as GST compensation to a State in any financial year during the transition period, the excess amount so released shall be adjusted against the GST compensation amount payable to the State in the subsequent financial year.

8. Levy and Collection of GST Compensation Cess

There shall be levied and collected in accordance with the provisions of this Act, a cess to be called the GST Compensation Cess at such rate as may be notified, but not exceeding…. per cent, on the value determined under section 15 of the CGST Act, 2016, and on such supplies of goods and services, including imports of goods and services, and those supplies on which tax is payable on reverse charge basis under section 7(3) of the CGST Act, which may be prescribed on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years, w.e.f. the date from which the CGST Act is brought into force.

Provided that no such cess shall be leviable under this section on supplies made by a taxable person permitted to opt for composition levy under section 8 of the CGST Act, 2016

.

Author's comments: As per Section 8 a cess called GST Compensation Cess at such rate as may be notified shall be levied and collected. Value for the levy of the cess is the value as determined under section 15 of the CGST Act. The cess is also applies to the supplies on which tax is payable under Reverse Charge Mechanism. However, cess is not levied to the taxable person who opts for composition levy.

9. Returns, Payments and Refunds

(1) Every taxable person registered under CGST Act, 2016, making a taxable supply of goods and/or services, shall furnish such returns in such formats, as may be prescribed, along with the returns to be filed under the Central Goods and Services Tax Act, 2016, shall pay the amount payable under the Act in the manner as may be prescribed and apply for refunds of cess paid and refundable in such form as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the format to be filed, the provisions of the Central Goods and Tax Act, 2016, and the rules made thereafter, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods and/or services, as they apply in relation to the levy and collection of Central Goods and Services Tax on such supplies under the said Act or the rules made thereunder, as the case may be.

Author's comments: In this regard, it may be noted that, for all purposes (i.e. furnishing of returns, claiming refunds, except for the format to be filed) the provisions of the Central Goods and Tax Act, 2016, and the rules made thereafter shall be applicable as far as apply

relation to the levy and collection of the cess leviable under section 8 of the CGST Act.

10. Crediting Proceeds of Cess to GST Compensation Fund

(1) The proceeds of the GST Compensation Cess leviable under section 8 shall be credited to a non-lapsable fund known as the GST Compensation Fund in the Public Account, and shall be utilized for purposes specified in section 8.

(2) All amounts payable to the States under section 7 shall be paid from the Goods and Tax Compensation Fund.

(3) Fifty percent of the amount remaining unutilized in the GST Compensation Fund at the end of the transition period shall be transferred to the Consolidated Fund of India, and shall be distributed between the Centre and the States and amongst the States as per provisions of clause (2) of article 270 of the Constitution; and the balance fifty percent shall be distributed amongst the States in the ratio of their total revenues from SGST in the last year of the transition period.

Author's comments: The GST compensation Cess is credited to the GST Compensation Fund and all amount paid to the state shall be paid from such fund. At the end of the transition period the fifty percent of the amount remaining unutilized in the fund shall be transferred to the Consolidated Fund of India, and shall be distributed between the Centre and the States and the balance fifty percent shall be distributed amongst the States in the ratio of their total revenues from SGST in the last year.

11. Other Provisions relating to CESS

(1) The provisions of the Central Goods and Tax Act, 2016, and the rules made thereafter, including those relating to assessment, input tax

credit (subject to sub-section (3)), non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, apply mutatis mutandis in relation to the levy and collection of the cess leviable under section 8 on the intrastate supply of goods and services, as they apply in relation to the levy and collection of Central Goods and Services Tax on such intra-state supplies under the said Act or the rules made thereunder, as the case may be.

(2) The provisions of the Integrated Goods and Tax Act, 2016, and the rules made thereafter, including those relating to assessment, input tax credit (subject to sub-section (3)), non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-state supply of goods and services, as they apply in relation to the levy and collection of Integrated Goods and Services Tax on such inter-state supplies under the said Act or the rules made thereunder, as the case may be.

Provided further that the input tax credit in respect of GST Compensation Cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of GST Compensation Cess on supply of goods and services leviable under section 8.

Author's comments: Input tax credit in respect of GST Compensation Cess on supply of goods and services leviable under section 8, shall be **utilised only towards payment of GST Compensation Cess** on supply of goods and services leviable under section 8

7. Rules

7.1 Draft Goods and Service Tax – Invoice Rules, 2016

Chapter-__

TAX INVOICE, CREDIT AND DEBIT NOTES

1. Tax invoice

(1) Subject to rule 5, a tax invoice referred to in section 23 shall be issued by the supplier containing the following details:-

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number containing only alphabets and/or numerals, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN/ Unique ID Number, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered and where the taxable value of supply is fifty thousand rupees or more; (f) HSN code of goods or Accounting Code of services;

(g) description of goods or services;

(h) quantity in case of goods and unit or Unique Quantity Code thereof;

(i) total value of goods or services;

(j) taxable value of goods or services taking into account discount or abatement, if any;

(k) rate of tax (CGST, SGST or IGST);

(l) amount of tax charged in respect of taxable goods or services (CGST, SGST or IGST);

(m) place of supply along with the name of State**,** in case of a supply in the course of inter-State trade or commerce;

(n) place of delivery where the same is different from the place of supply;

(o) whether the tax is payable on reverse charge;

(p) the word "Revised Invoice" or "Supplementary Invoice", as the case may be, indicated prominently, where applicable along with the date and invoice number of the original invoice; and

(q) signature or digital signature of the supplier or his authorized representative**.**

Provided that the Board/Commissioner may, by notification, specify -

(i) the number of digits of HSN code for goods or, as the case may be, the Accounting Code for services, that a class of taxable persons shall be required to mention, for such period as may be specified in the said notification, and

(ii) the class of taxable persons that would not be required to mention the HSN code for goods or, as the case may be, the Accounting Code for services, for such period as may be specified in the said notification:

Provided further that in case of exports, the invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST" or "SUPPLY MEANT FOR EXPORT UNDER BOND WITHOUT PAYMENT OF IGST", as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details:

(i) name and address of the recipient;

(ii) address of delivery;

(iii) name of the country of destination; and

(iv) number and date of application for removal of goods for export [ARE-1].

(2) The invoice referred to in sub-rule (1), in case of taxable supply of services, shall be issued within a period of thirty days from the date of supply of service:

Provided that in case of continuous supply of services, the invoice shall be issued within a period of thirty days from the date when each

event specified in the contract, which requires the recipient to make any payment to the supplier of services, is completed:

Provided further that where the supplier of service is a banking company or a financial institution including a non-banking financial company, the period within which the invoice is to be issued shall be forty five days from the date of supply of service.

2. Manner of Issuing Invoice

(1) The invoice shall be prepared in triplicate, in case of supply of goods, in the following manner:–

(a) the original copy being marked as ORIGINAL FOR RECIPIENT;

(b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and (c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.

Provided that the duplicate copy is not required to be carried by the transporter if the supplier has obtained an Invoice Reference Number under sub-rule (4).

(2) The invoice shall be prepared in duplicate, in case of supply of services, in the following manner:-

(a) the original copy being marked as ORIGINAL FOR RECEIPIENT; and (b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

(3) The serial number of invoices issued during a tax period shall be furnished electronically through the Common Portal in **FORM GSTR-1**.

(4) A registered taxable person may obtain an Invoice Reference Number from the Common Portal by uploading, on the said Portal, a tax invoice issued by him in **FORM GST INV-1**, and produce the same for verification by the proper officer as required under section 61 in lieu of the tax invoice.

(5) The Invoice Reference Number shall be valid for a period of 30 days from the date of uploading.

3. Bill of supply

A bill of supply referred to in the second proviso to section 23 shall be issued by the supplier containing the following details:-

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number containing only alphabets and/or numerals, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN/ Unique ID Number, if registered, of the recipient;

(e) HSN Code of goods or Accounting Code for services;

(f) description of goods or services;

(g) value of goods or services taking into account discount or abatement, if any; and

(h) signature or digital signature of the supplier or his authorized representative:

Provided that the proviso to sub-rule (1) of rule 1 shall apply, *mutatis mutandis*, to the bill of supply issued under this rule:

Provided further that the registered taxable person may not issue a bill of supply if the value of the goods or services supplied is less than one hundred rupees except where the recipient of the goods or services requires such bill:

Provided also that a consolidated bill of supply shall be prepared by the registered taxable person at the close of each day in respect of all such supplies where the bill of supply has not been issued in terms of the second proviso.

4. Supplementary tax invoice and Credit or debit notes

(1) A supplementary tax invoice under section 23 and a credit or debit note under section

24 shall contain the following details -

(a) name, address and GSTIN of the supplier;

(b) nature of the document;

(c) a consecutive serial number containing only alphabets and/or numerals, unique for a financial year;

(d) date of issue of the document;

(e) name, address and GSTIN/ Unique ID Number, if registered, of the recipient;

(f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered;

(g) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;

(h) taxable value of goods or services, rate of tax and the amount of the tax credited or**,** as the case may be**,** debited to the recipient; and

(i) signature or digital signature of the supplier or his authorized representative.

(2) Every registered taxable person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration:

Provided that the registered taxable person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period:

Provided further that in case of inter-State supplies, where the value of a supply does not exceed two hundred and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all recipients located in a State, who are not registered under the Act.

5. Tax Invoice in special cases

(1) A tax invoice issued by an Input Service Distributor shall contain the following details:- (a) name, address and GSTIN of the Input Service Distributor;

(b) a consecutive serial number containing only alphabets and/or numerals, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN of the supplier of services, the credit in respect of which is being distributed and the serial number and date of invoice issued by such supplier;

(e) name, address and GSTIN of the recipient to whom the credit is distributed;

(f) amount of the credit distributed; and

(g) signature or digital signature of the supplier or his authorized representative:

Provided that where the Input Service Distributor is an office of a banking company or a financial institution including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as prescribed above.

(2) Where the supplier of taxable service is a banking company or a financial institution including a non-banking financial company, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed under rule 1.

(3) Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods

are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also contains other information as prescribed under rule 1.

(4) Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, and whether or not containing the address of the recipient of service but containing other information as prescribed under rule 1.

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7.2 Draft Goods and Service Tax -Payment Rules, 2016

Chapter-

PAYMENT OF TAX

1. Electronic Tax Liability Register

(1) The electronic tax liability register under sub-section (7) of section 35 shall be maintained in **FORM GST PMT-1** on the Common Portal and all amounts payable by a taxable person shall be debited to the said register.

(2) The electronic tax liability register of a registered taxable person shall be debited by:

(a) the amount payable towards tax, interest, late fee or any other amount payable as per the return filed by the said person;

(b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any

proceeding under the Act or as ascertained by the said person;

(c) the amount of tax and interest payable as a result of mismatch under section 29 or section 29A or section 43C; or

(d) any amount of interest that may accrue from time to time.

(3) Subject to the provisions of section 35, payment of every liability by a registered taxable person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 2 and/or, as the case may be, the electronic cash ledger maintained as per rule 3 and the electronic tax liability register shall be credited accordingly.

(4) The amount deducted under section 37, or the amount collected under section 43C, or the amount payable under sub-section (3) of section 7, or the amount payable under section 8, or any amount payable towards interest, penalty, fee or any other amount shall be paid by debiting the electronic cash ledger maintained as per rule 3 and the electronic tax liability register shall be credited accordingly.

(5) Any amount of demand debited in the electronic tax liability register shall stand reduced to the extent of relief given by the appellate authority and the electronic tax liability register shall be credited accordingly.

(6) The amount of penalty imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order, as the case may be, and the electronic tax liability register shall be credited accordingly.

2. Electronic Credit Ledger

(1) The electronic credit ledger shall be maintained in **FORM GST PMT-2** for each registered taxable person on the Common Portal and every

claim of input tax credit under the Act shall be credited to the said Ledger.

(2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with section 35.

(3) Where a registered taxable person has claimed refund of any unutilized amount from the electronic credit ledger in terms of section 38, the amount to the extent of the claim shall be debited in the said ledger.

(4) If the refund so filed is rejected, either fully or partly, the amount debited under subrule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-2A**.

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

3. Electronic Cash Ledger

(1) The electronic cash ledger under sub-section (1) of section 35 shall be maintained in **FORM GST PMT-3** for each registered taxable person on the Common Portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

(2) A registered taxable person, or any other person on his behalf, shall generate a challan in **FORM GST PMT-4** on the Common Portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount. (3) The deposit under sub-rule (2) shall be made through any of the following modes:

(i) Internet Banking through authorized banks;

(ii) Credit card or Debit card after registering the same with the Common Portal through the authorised bank;

(iii) National Electronic Fund Transfer (NeFT) or Real Time Gross Settlement (RTGS) from any bank;

(iv) Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:

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

(a) Government Departments or any other deposit to be made by persons as may be notified by the Board/Commissioner (SGST) in this behalf;

(b) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

(c) Proper officer or any other officer authorized for the amounts collected by way of cash or cheque, demand draft during any investigation or enforcement activity or any *ad hoc* deposit:

Provided further that the challan in **FORM GST PMT-4** generated at the Common Portal shall be valid for a period of fifteen days.

Explanation.– For making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the taxable person making such payment.

(3) Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated by the proper officer through the Common Portal and the details of such payment shall be recorded in a register in **FORM GST PMT-5**, to be maintained on the Common Portal.

(4) Where the payment is made by way of NeFT or RTGS mode from any bank, the mandate form shall be generated along with the challan and the same shall be submitted to the bank from where the payment is to be made:

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

(5) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan:

Provided that where the bank account of the concerned taxable person, or the person making the deposit on his behalf, is debited but no Challan Identification Number (CIN) is generated, the said person may represent electronically in **FORM GST PMT-6** through the Common Portal to the Bank or electronic gateway through which the deposit was initiated.

(6) On receipt of CIN from the authorized Bank, the said amount shall be credited to the electronic cash ledger of the registered taxable person who, or on whose behalf, the deposit has been made and the Common Portal shall make available a receipt to this effect.

(7) Any amount deducted under section 37 or collected under section 43C and claimed in **FORM GSTR-2** by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger as per rule **Return.2**.

(8) Where a taxable person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

(9) If the refund so filed is rejected, either fully or partly, the amount debited under subrule (9), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in **FORM GST PMT-2A**.

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

4. Identification number for each transaction

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

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

(3) A unique identification number shall be generated at the Common Portal for each credit in the electronic tax liability register for reasons other than those covered under subrule (2).

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7.3 Draft Goods and Service Tax - Refund Rules, 2016

Chapter-__:

REFUND

1. Refund of tax, interest, penalty, fees or any other amount

(1) Any registered taxable person, except the persons covered by notification issued under clause (d) of sub-section (6) of section 38, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, may file an application in **FORM GST RFD-1** electronically through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner:

Provided that any claim for refund relating to balance in the electronic cash ledger in terms of sub-section (6) of section 35 may be made through the return for the relevant tax period in **FORM GSTR-3**, **FORM GSTR-4** or **FORM GSTR-7**:

Provided further that in case of export of goods, application for refund shall be filed only after the export manifest or an export report, as the case may be, in respect of such goods is delivered under section 41 of the Customs Act 1962:

Provided also that in respect of supplies made to an SEZ unit or a developer, or supplies regarded as deemed exports, the application shall be filed by the said unit or the developer or the recipient of deemed export supplies.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences, as applicable, to establish that a refund is due to the applicant:

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or any competent court resulting in such refund including refund of pre-deposit under chapter XVIII along with the reference number of the payment of the amount claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export

invoices, in a case where the refund is on account of export of goods;

(c) a statement containing the number and date of invoices as prescribed in rule **Invoice._** in case of supply of goods made to an SEZ unit or a developer;

(d) a statement containing the number and date of invoices, in a case where the refund is on account of deemed exports;

(e) a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of export of services;

(f) a statement containing the number and date of invoices and the details of payment, along with proof thereof, made by the claimant to the supplier for authorized operations as defined under the SEZ Act, 2005, in a case where the refund is on account of supply of services made to an SEZ unit or a developer;

(g) a statement in **Annex 1** of **FORM GST RFD-1** containing the number and date of invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilized input tax credit under sub-section (2) of section 38 where the credit has accumulated on account of rate of input tax being higher than the rate of output tax;

(h) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of finalisation of provisional assessment;

(i) a declaration to the effect that the incidence of tax and interest claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed is less than five lakh rupees:

Provided that a declaration is not required to be furnished in respect of cases covered under clause (a), (b) or (d) of sub-section (6) of section 38;

(j) a Certificate in **Annex 2** of **FORM GST RFD-1** issued by a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax and interest claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed is five lakh rupees or more:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a), (b) or (d) of sub-section (6) of section 38;

Explanation 1.– For the purpose of this rule, "invoice" means invoice conforming to the provisions contained in section 23A in case of refunds referred to in clause (c) of sub-section (6) of section 38.

Explanation 2.– 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.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant in an amount equal to the refund so claimed.

(4) Where any taxable goods or services are exported without payment of tax, under bond or letter of undertaking under **section** ___ of the IGST Act, 201_, refund of input tax credit shall be granted as per the following formula:

Refund Amount = (Export turnover of goods + Export turnover of services) x Net ITC / Adjusted Total Turnover

Where,-

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;

(C) "Export turnover of goods" means the value of goods exported during the relevant period without payment of tax under bond or letter of undertaking;

(D) "Export turnover of services" means the value of services exported without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose supply has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the supply of service has not been completed during the relevant period;

(E) "Adjusted Total turnover" means the value of turnover in a State, as defined under subsection (104) of section 2, excluding the value of exempt supplies, during the relevant period;

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

Provided that no refund of input tax credit shall be allowed if the supplier of goods and / or services avails of drawback allowed under the applicable Drawback Rules or claims rebate of tax paid under the Act or the IGST Act, 201_ in respect of such tax.

(5) The application for refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 19A at the time of registration, shall be claimed either in the last return required to be filed by him or only after filing of the said last return.

(6) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in **FORM GST RFD-2** shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund.

(7) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4), an acknowledgement in **FORM**

GST RFD-2 shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund.

(8) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-3** through the Common Portal electronically, requiring him to file a refund application after rectification of such deficiencies.

(9) Where deficiencies have been communicated in **FORM GST RFD-3** under the GST Rules of the State, the same shall also deemed to have been communicated under this Rule along with deficiencies communicated under sub-rule (8).

[CGST Rules]

(10) Where deficiencies have been communicated in **FORM GST RFD-3** under the CGST Rules, the same shall also deemed to have been communicated under this Rule along with deficiencies communicated under sub-rule (8).

[SGST Rules]

2. Grant of provisional refund

(1) The provisional refund under sub-section (4A) of section 38 shall be granted subject to the following conditions -

(a) the person claiming refund has, during any period of five 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 earlier law where the amount of tax evaded exceeds two hundred and fifty lakh rupees;

(b) the GST compliance rating of the applicant is not less than five on a scale of ten;

(c) no proceeding of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.

(2) 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 under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (4A) of section 38, shall make an order in **FORM GST RFD-4**, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of acknowledgement under sub-rule (7) of rule 1.

(3) The proper officer shall issue a payment advice in **FORM GST RFD-8**, for the amount sanctioned under sub-rule (2) to 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.

3. Order sanctioning refund

(1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (4) of section 38 is due and payable to the applicant, he shall make an order in **FORM GST RFD-5**, sanctioning the amount of refund to which the applicant is entitled, mentioning therein, the amount, if any, refunded to him on a provisional basis under sub-section (4A) of section 38, amount adjusted against any outstanding demand under the Act or under any earlier law and the balance amount refundable:

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any earlier law, an order giving details of the adjustment may be issued in **FORM GST RFD-6**.

(2) 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 in **FORM GST RFD-7** to the applicant, requiring him to furnish a reply within fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-5**, sanctioning the

amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provision of sub-rule (1) shall apply *mutatis mutandis* to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant a reasonable opportunity of being heard.

(3) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or (2) is payable to the applicant under sub-section (6) of section 38, he shall make an order in **FORM GST RFD-5** and issue a payment advice in **FORM GST RFD-8**, for the amount of refund to 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.

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or (2) is not payable to the applicant under sub-section (6) of section 38, he shall make an order in **FORM GST RFD-5** and issue an advice in **FORM GST RFD-8**, for the amount of refund to be credited to the Consumer Welfare Fund.

4. Credit of the amount of rejected refund claim

(1) Where any deficiencies have been communicated under sub-rule (8) of rule 1, the amount debited under sub-rule (3) of rule 1 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 3, 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 **FORM GST PMT-2A**.

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

5. Order sanctioning interest on delayed refunds

Where any interest is due and payable to the applicant under section 39, the proper officer shall make an order and a payment advice in **FORM GST RFD-9**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of 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.

6. Refund of tax to certain persons

(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per a notification issued under clause (d) of sub-section (6) of section 38 shall apply for refund in **FORM GST RFD-10** once in every quarter, electronically on the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner along with a statement of inward supplies of goods and/or services in **FORM GSTR-11**, prepared on the basis of statement of outward supplies furnished by corresponding suppliers in **Form GSTR1**.

(2) An acknowledgement for receipt of the application for claiming refund shall be issued in **FORM GST RFD-2**.

(3) Refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods and/or services were received from a registered taxable person against a tax invoice and the price of the supply covered under a
single tax invoice exceeds five thousand rupees, excluding tax paid, if any;

(b) name and GSTIN/UIN, if available, of the applicant is mentioned in the tax invoice; and

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

(4) The provisions of rule 3 shall apply *mutatis mutandis* for the sanction and payment of refund under this rule.

(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.

7.4 Draft Goods and Service Tax – Registration Rules, 2016

Chapter-__

REGISTRATION

1. Application for registration

(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 37 and a person required to collect tax at source under section 43C, who is liable to be registered under sub-section (1) of section 19 and every person seeking registration under sub-section (3) of section 19 (hereinafter referred to in this Chapter as "the applicant") shall, before applying for registration, declare his Permanent Account Number (PAN), mobile number and e-mail address in **Part A** of **FORM GST REG-01** on the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

(2) (a) The PAN shall be validated online by the Common Portal from the database maintained by the Central Board of Direct Taxes constituted under the Central Board of Revenue Act, 1963 (54 of 1963).

(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number.

(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.

(3) On successful verification of the PAN, mobile number and e-mail address, an application reference number shall be generated and

communicated to the applicant on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-rule (3), the person referred to in sub-rule (1) shall electronically submit an application in **Part B** of **FORM GST REG01**, duly signed, along with documents specified in the said Form, at the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in **FORM GST REG-02**.

(6) A person applying for registration as a casual taxable person shall be given a temporary identification number by the Common Portal for making advance deposit of tax under section 19A and the acknowledgement under sub-rule (5) shall be issued electronically thereafter.

(7) The person applying for registration under sub-rule (6) shall make an advance deposit of tax in an amount equivalent to the estimated tax liability during the period for which registration is sought, as specified in section 19A.

2. Verification of the application

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within three common working days from the date of submission of application.

(2) Where the application submitted under rule 1 is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may so intimate to the applicant electronically in **FORM GST REG-03** within three common working

days from the date of submission of application and the applicant shall furnish electronically such clarification, information or documents sought, in **FORM GST REG-04**, within seven common working days from the date of receipt of such intimation.

Explanation: The clarification includes modification or correction of particulars declared in the application for registration, other than PAN, mobile number and e-mail address declared in **Part A** of **FORM GST REG-01**.

(3) Where a clarification under sub-rule (2) of the GST Rules of the concerned State has been sought prior to any clarification, information or document being sought under sub-rule (2), the clarification, information or document furnished by the applicant shall be forwarded to the proper officer under said Rules for appropriate action.

(CGST Rules)

(3) Where a clarification under sub-rule (2) of the CGST Rules has been sought prior to any clarification being sought under the sub-rule (2), the information furnished by the applicant shall be forwarded to the proper officer under the CGST Rules for appropriate action.

(SGST Rules)

(4) Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within seven common working days of receipt of such clarification or information or document.

(5) Where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05**.

(6) If the proper officer fails to take any action-

(a) within three common working days from the date of submission of application, or

(b) within seven common working days from the date of receipt of clarification, information or documents furnished by the

applicant under sub-rule (2), the application for grant of registration shall be deemed to have been approved.

3. Issue of registration certificate

(1) Subject to the provisions of sub-section (11) of section 19, where the application for grant of registration has been approved under rule 2, a certificate of registration in **FORM GST REG-06** for the principal place of business and for every additional place of business shall be made available to the applicant on the Common Portal.

(2) The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within thirty days from such date.

(3) Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration under sub-rules (1), (4) or (6) of rule 2.

4. Separate Registrations for multiple business verticals within a State

(1) Any person having multiple business verticals within a State, requiring a separate registration for any of its business verticals under sub-section (2) of section 19 shall be granted separate registration in respect of each of the verticals subject to the following conditions:

(a) Such person has more than one business vertical as defined under subsection (18) of section 2 of the Act;

(b) No business vertical of a taxable person shall be granted registration to pay tax under section 8 if any one of the other business verticals of the same person is paying tax under section 7.

Explanation: Where any business vertical of a registered taxable person that has been granted a separate registration becomes ineligible to pay tax under section 8, all other business verticals of

the said person shall become ineligible to pay tax under section 8.

(c) All separately registered business verticals of such person shall pay tax under this Act on supply of goods and/or services made to another registered business vertical of such person and issue a tax invoice for such supply.

(2) A registered taxable person eligible to obtain separate registration for business verticals may file separate application in **FORM GST REG-01** in respect of each such vertical.

(3) The provisions of rule 1 and rule 2 relating to verification and grant of registration shall *mutatis mutandis* apply to an application made under this rule.

5. Grant of Registration to persons required to deduct tax at source or collect tax at source

(1) Any person required to deduct tax under sub-section (1) of section 37 or a person required to collect tax at source under section 43C shall electronically submit an application, duly signed, in **FORM GST REG-07** for grant of registration, through the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

(2) The proper officer may grant registration after due verification and issue a registration certificate in **FORM GST REG-06** within three common working days from the date of submission of application.

(3) Where, upon an enquiry or pursuant to any other proceeding, the proper officer is satisfied that a person to whom a certificate of registration in **FORM GST REG-06** has been issued is no longer liable to deduct tax at source under section 37 or collect tax at source under section 43C, the said officer may cancel the registration issued under subrule (2) and such cancellation shall be communicated to the said person in **FORM GST REG-08**.

Provided that the proper officer shall not cancel the registration without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

6. Assignment of unique identity number to certain special entities

(1) Every person required to obtain a unique identity number under sub-section (6) of section 19 may submit an application, electronically in **FORM GST REG-09**, duly verified in the manner specified in rule 1, at the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

(2) The proper officer may, upon submission of an application in **FORM GST REG-9** or after filling up the said form, assign a Unique Identity Number to the said person and issue a certificate in **FORM GST REG-06**, within three common working days from the date of submission of application.

7. Display of registration certificate and GSTIN in name board

(1) Every registered taxable person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.

(2) Every registered taxable person shall display his GSTIN in the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

8. Grant of registration to non-resident taxable person

(1) A non-resident taxable person shall electronically submit an application for registration, duly signed, in **FORM GST REG-10**, at least five days prior to commencement of the business at the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

(2) A person applying for registration as a non-resident taxable person shall be given a temporary identification number by the Common Portal

for making an advance deposit of tax under section 19A and the acknowledgement under sub-rule (5) of rule 1 shall be issued thereafter.

(3) The person applying for registration under sub-rule (1), shall make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person during the period for which registration is sought, as specified in section 19A.

(4) The provisions of rule 1 and rule 2 relating to verification and grant of registration shall apply *mutatis mutandis* to an application made under this rule.

9. Amendment to Registration

(1) Where there is any change in any of the particulars furnished in the application for registration in **FORM GST REG-01**, **FORM GST REG-07**, **FORM GST REG-09** or **FORM GST-REG-10**, as the case may be, either at the time of obtaining registration or as amended from time to time, the registered taxable person shall, within fifteen days of such change, submit an application electronically, duly signed, in **FORM GST REG-11**, electronically, along with documents relating to such change at the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

(2) (a) Where the change relates to the Name of Business, Principal Place of Business, and details of partners or directors, karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for day to day affairs of the business which does not warrant cancellation of registration under section 21, the proper officer shall approve the amendment within fifteen common working days from the date of receipt of application in **FORM GST REG11** after due verification and on being satisfied about the need to make amendment and issue an order in **FORM GST REG-12** electronically and such amendment shall take effect from the date of occurrence of the event warranting amendment.

(b) Where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in **FORM GST REG-11** on the Common Portal:

Provided that any change in the mobile number or the e-mail address of authorised signatory submitted under rule 1, as amended from time to time, shall be carried out only after online verification through the Common Portal in the manner provided under rule 1.

(c) Where a change in the constitution of any business results in change of the Permanent Account Number (PAN) of a registered taxable person, the said person shall apply for fresh registration in **FORM GST REG-01**.

(3) Where the proper officer is of the opinion that the amendment sought under clause (a) of sub-rule (2) is either not warranted or the document furnished therewith is incomplete or incorrect, he may, by a notice in **FORM GST REG-03**, within fifteen common working days from the date of receipt of the application in **FORM GST REG-11**, require the registered taxable person to show cause, within seven common working days of the service of the said **Form GST REG-03**, as to why the application submitted under sub-rule (1) shall not be rejected.

(4) The taxable person seeking amendment shall file reply to the notice to show cause issued under the sub-rule 3, in **FORM GST REG-04** within seven days of the receipt of the said notice.

(5) Where a notice to show cause has already been issued by the proper officer under the [SGST Rules of the State/CGST Rules] no notice shall be issued under sub-rule (3) by the proper officer.

(6) If the proper officer fails to take any action-

(a) within fifteen common working days from the date of submission of application, or

(b) within seven days from the receipt of the clarification, information or documents furnished by the applicant under sub-rule (3),the

certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available on the Common Portal.

10. *Suo moto* registration

(1) Where, during the course of any survey, inspection, search, enquiry or any other proceeding under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in **FORM GST REG 13**.

(2) The registration issued under sub-rule (1) shall be effective from the date of order of registration.

(3) Every person to whom a temporary registration has been granted under sub-rule (1) shall, within thirty days from the date of the grant of such registration under the said sub-rule, file an application for registration in the form and manner provided in rule 1 unless the said person has filed an appeal against the grant of temporary registration, in which case the application for registration shall be applied for thirty days after the date of the issuance of order upholding the liability to register by the Appellate Authority.

(4) The provisions of rule 2 and rule 3 relating to verification and issue of certificate of registration shall apply *mutatis mutandis* to an application submitted under sub-rule (3).

(5) The GSTIN assigned pursuant to verification under sub-rule (4) shall be effective from the date of order of registration under sub-rule (1).

11. Application for cancellation of registration

(1) A registered taxable person seeking cancellation of his registration under subsection (1) of section 21 shall electronically submit an application in **FORM GST REG-14** including the details of closing stock and liability thereon and may furnish, along with the application,

relevant documents in support thereof at the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner:

Provided that no application for cancellation of registration shall be considered in case of a taxable person, who has registered voluntarily, before the expiry of a period of one year from the effective date of registration.

(2) Every taxable person, other than a person paying tax under section 8, seeking cancellation of registration under sub-rule (1) shall furnish a final return under rule **Return.19.**

12. Cancellation of registration

(1) Where the proper officer has reasons to believe that the registration of a taxable person is liable to be cancelled under section 21, he may issue a notice to the taxable person in **FORM GST REG-15** to show cause within seven days as to why his registration should not be cancelled:

Provided that where a notice for cancellation has been issued under [SGST rules of the State/CGST Rules], no notice shall be issued under sub-rule (1).

(2) Where the proper officer is satisfied that a taxable person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled under section 21, he may, by issue of an order in **FORM GST REG-16**, to be passed within thirty days from the date of application under sub-rule (1) of rule 11 or, as the case may be, the date of reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section(7) of section 21.

(3) The provisions of sub-rule (1) shall apply *mutatis mutandis* to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

13. Revocation of cancellation of registration

(1) A taxable person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in **FORM GST REG-17**, to such proper officer, within thirty days from the date of service of the order of cancellation of registration at the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner:

Provided that no application for revocation shall be filed if the registration has been cancelled for the failure of the taxable person to furnish returns unless such returns are filed and any amount due as tax in terms of such returns has been paid along with any amount payable towards interest, penalties and late fee payable in respect of the said returns.

(2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in **FORM GST REG-18** within thirty days from the date of receipt of such application and communicate the same to the applicant.

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in **FORM GST REG05**, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(3) The proper officer may require the applicant to furnish, within three common working days of the filling of the application, such additional information or clarification as, in his opinion, may be required for verifying the particulars furnished in the said application, in **FORM GST REG–03** and the applicant shall furnish the information or the clarification within seven common working days from the date of the service of notice in **FORM GST REG-04**.

(4) Upon receipt of the information or clarification in **FORM GST REG-04** , the proper officer may proceed to dispose of the application in the manner specified in sub-rule (2) within thirty days from the receipt of such information or clarification from the applicant:

Provided that the application shall not be rejected without affording the applicant an opportunity of being heard by issue of a notice in **FORM GST REG-19** within thirty days from the date of receipt of such application.

14. Migration of persons registered under Earlier Law

(1) Every person registered under an earlier law and having a Permanent Account Number issued under the Income Tax Act, 1961 (Act 43 of 1961) shall be granted registration on a provisional basis and a certificate of registration in **FORM GST REG21**, incorporating the Goods and Services Tax Identification Number (GSTIN) therein, shall be made available on the Common Portal.

(2) (a) Every person who has been granted a provisional registration under subrule (1) shall submit an application electronically in **FORM GST REG–20,** duly signed, along with the information and documents specified in the said application, on the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

(b) The information asked for in clause (a) shall be furnished within the period specified in section 142 or within such further period as may be extended by the Board or Commissioner in this behalf.

(c) If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration in **FORM GST REG-06** shall be made available to the registered taxable person electronically on the Common Portal.

(3) Where the particulars and/or information specified in sub-rule (2) have either not been furnished or not found to be correct or complete, the

proper officer shall cancel the provisional registration granted under sub-rule (1) and issue an order in **FORM GST REG-22**:

Provided that no provisional registration shall be cancelled as aforesaid without serving a notice to show cause in **FORM GST REG-23** and without affording the person concerned a reasonable opportunity of being heard.

(4) Every person registered under any of the earlier laws, who is not liable to be registered under the Act may, at his option, file electronically an application in **FORM GST REG-24** at the Common Portal for cancellation of the registration granted provisionally to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said provisional registration.

15. Method of authentication

(1) All applications, including reply, if any, to the notices, returns, appeals or any other document required to be submitted under these rules shall be filed electronically at the Common Portal with digital signature certificate or through e-signature as specified under Information Technology Act, 2000 (21 of 2000) or through any other mode of signature notified by the Board/Commissioner in this behalf.

(2) Each document including return filed online shall be signed by -

(a) in the case of an individual, by the individual himself or by some person duly authorised by him in this behalf and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;

(c) in the case of a company, by the chief executive officer or authorised signatory thereof;

(d) in the case of a Government or any Governmental agency or local authority, by an officer authorised in this behalf;

(e) in the case of a firm, by any partner thereof, not being a minor or authorised signatory;

(f) in the case of any other association, by any member of the association or persons or authorised signatory;

(g) in the case of a trust, by the trustee or any trustee or authorised signatory; and

(h) in the case of any other person, by some person competent to act on his behalf.

(3) All orders and notices under this chapter / Part shall be issued electronically by the proper officer or any other officer authorised to issue any notice or order, through digital signature certificate specified under the Information Technology Act, 2000 (21 of 2000).

16. Extension in period of operation by casual taxable person and non-resident taxable person

(1) Where a registered casual taxable person or non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in **Form GST REG-25** shall be furnished electronically through the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner by such person before the end of the validity of registration granted to him.

(2) The application under sub-rule (1) shall be acknowledged only on payment of the amount specified in sub-section (2) of section 19A.

17. Physical verification of business premises in certain cases

Where the proper officer is satisfied that the physical verification of the place of business of a taxable person is required after grant of registration, he may get such verification done and upload the

verification report along with other documents, including photographs, in **Form GST REG-26** on the day following the date of such verification.

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7.5 Draft Goods and Service Tax – Return Rules, 2016

Chapter-__:

RETURNS

1. Form and manner of furnishing details of outward supplies

(1) Every registered taxable person required to furnish the details:

(a) of outward supplies of goods and/or services effected during a tax period under sub-section (1) of section 25; and

(b) of outward supplies of goods and/or services effected during an earlier tax period under sub-section (2) of section 25 shall furnish such details in **FORM GSTR-1** electronically through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner.

(2) The details of outward supplies furnished by the supplier shall be made available electronically to each of the registered taxable persons (recipients) in **Part A** of **FORM GSTR-2A** through the Common Portal after the due date of filing of **FORM GSTR-1**.

(3) The details of inward supplies added, corrected or deleted by the recipient in his **FORM GSTR-2** under sub-section (1) of section 26 or **FORM GSTR-4** under section 27 shall be made available to the supplier electronically in **FORM GSTR-1A** through the Common Portal and such supplier may either accept or reject the modifications made by the recipient and **FORM GSTR-1** furnished by the supplier shall stand amended to the extent of modifications accepted by him.

2. Form and manner of furnishing details of inward supplies

(1) Every registered taxable person required to furnish the details of inward supplies of goods and/or services received during a tax period under sub-section (2) of section 26 shall, on the basis of details contained in **Part A** of **FORM GSTR-2A**, prepare such details in the manner specified in sub-section (1) of the said section and furnish the same in **FORM GSTR-2** electronically through the Common Portal, either directly or from a Facilitation Centre, notified by the Board or Commissioner, after including therein details of such other inward supplies, if any, required to be furnished under sub-section (2) of section 26.

(2) Every registered taxable person shall furnish the details, if any, required under sub-section (3) of section 26 electronically in **FORM GSTR-2**.

(3) The recipient of goods and/or services shall specify the inward supplies in respect of which he is not eligible, either fully or partially, for input tax credit in **FORM GSTR-2** where such eligibility can be determined at the invoice level.

(4) The recipient of goods and/or services shall declare the quantum of ineligible input tax credit on inward supplies which is relatable to non-taxable supplies or for purposes other than business and cannot be determined at the invoice level in **FORM GSTR-2**.

(5) The details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** under rule 7 shall be made available to the recipient of credit in **Part B** of **FORM GSTR 2A** electronically through the Common Portal and the said recipient may include the same in **FORM GSTR-2**.

(6) The details of tax deducted at source by the deductor under section 37 furnished in **FORM GSTR-7** shall be made available to the deductee in **Part C** of **FORM GSTR-2A** electronically through the Common Portal and the said deductee may include the same in **FORM GSTR-2**.

(7) The details of tax collected at source by an e-commerce operator under section 43C furnished in **FORM GSTR-8** shall be made available to the concerned taxable person in **Part D** of **FORM GSTR 2A** electronically through the Common Portal and such taxable person may include the same in **FORM GSTR-2**.

3. Form and manner of submission of monthly return

(1) Every registered taxable person, other than a taxable person paying tax under section 8, shall furnish a return under sub-section (1) of section 27 in **FORM GSTR-3** electronically through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner.

(2) **Part A** of the return under sub-rule (1) shall be electronically generated on the basis of information furnished through returns in **FORM GSTR-1, FORM GSTR-2**, electronic credit ledger, electronic cash ledger and electronic tax liability register of the taxable person.

(3) Every registered taxable person furnishing the return under sub-rule (1) shall, subject to the provisions of section 35, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger and/or electronic credit ledger as per the details contained in **Part B** of the return in **FORM GSTR-3**.

(4) A registered taxable person, claiming refund of any balance in the electronic cash ledger as per sub-section (6) of section 35, may claim such refund in **Part B** of the return in **FORM GSTR-3** and such return shall be deemed to be an application filed under section 38.

(5) Where the time limit for furnishing **FORM GSTR-1** under sub-section (1) of section 25 and FORM GSTR-2 under sub-section (2) of section 26 has been extended, return in **FORM GSTR-3** may be furnished in such manner as may be notified by the Commissioner/Board.

4. Form and manner of submission of quarterly return by the composition supplier

(1) Every registered taxable person paying tax under section 8 shall, after adding, correcting or deleting the details contained in **FORM GSTR-4A**, furnish a quarterly return in **FORM GSTR-4** electronically through the Common Portal, either directly or from a Facilitation Centre, notified by the Board or Commissioner.

(2) Every registered taxable person furnishing the return under sub-rule (1) shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger.

5. Form and manner of submission of return by non-resident taxable person

Every registered non-resident taxable person shall furnish a return in **FORM GSTR-5** electronically through the Common Portal, either directly or from a Facilitation Centre, notified by the Board or Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these rules within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier.

6. Form and manner of submission of return by input service provider

Every input service distributor shall, after adding, correcting or deleting the details contained in **FORM GSTR-6A**, furnish electronically a return in **FORM GSTR-6,** containing the details of tax invoices on which credit has been received and those issued under section 17, through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner.

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

(1) Every registered taxable person required to deduct tax at source under section 37 shall furnish a return in **FORM GSTR-7** electronically through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner.

(2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in **Part C** of **FORM GSTR-2A** on the Common Portal after the due date of filing of **FORM GSTR-7**.

(3) The certificate referred to in sub-section (3) of section 37 shall be made available electronically to the deductee on the Common Portal in **FORM GSTR-7A** on the basis of the return filed under sub-rule (1).

8. Form and manner of submission of statement of supplies effected through e-Commerce

(1) Every e-Commerce operator required to collect tax at source under section 43C shall furnish a statement in **FORM GSTR-8** electronically through the Common Portal, either directly or from a Facilitation Centre, notified by the Board or Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 43C.

(2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in **Part D** of **FORM GSTR-2A** on the Common Portal after the due date of filing of **FORM GSTR-8**.

9. Notice to non-filers of returns

A notice in **FORM GSTR-3A** shall be issued, electronically, to a registered taxable person who fails to furnish return under section 27 and section 31.

10. Matching of claim of input tax credit

(1) The following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 28, shall be matched under section 29 after the due date for furnishing the return in **FORM GSTR-3**

(a) GSTIN of the supplier

(b) GSTIN of the recipient

(c) Invoice/Debit Note date

(d) Invoice/Debit Note number

(e) Taxable value (f) Tax amount:

Provided that where the time limit for furnishing **FORM GSTR-1** under sub-section (1) of section 25 and **FORM GSTR-2** under sub-section (2) of section 26 has been extended, the date of matching relating to claim of input tax credit shall be extended to such date as may be notified by the Board/Commissioner.

Explanation: (1) The claim of input tax credit in respect of invoices and debit notes in **FORM GSTR-2** that were accepted by the recipient in **FORM GSTR-2A** without amendment shall be treated as matched if the corresponding supplier has furnished a valid return.

(2) The claim of input tax credit shall be considered as matched, where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or Debit Note, as the case may be, by the corresponding supplier.

11. Final acceptance of input tax credit and communication thereof

(1) The final acceptance of claim of input tax credit in respect of any tax period, specified in sub-section (2) of section 29, shall be made available electronically to the registered taxable person making such claim in **FORM GST ITC-1** through the Common Portal.

(2) The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier and/or recipient shall be finally accepted and made available electronically to the taxable person making such claim in **FORM GST ITC-1** through the Common Portal.

12. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit

(1) Any discrepancy in the claim of input tax credit in respect of any tax period, specified in sub-section (3) of section 29 and the details of output tax liable to be added under sub-section (5) of the said section on account of continuation of such discrepancy shall be made available to the registered taxable person making such claim and the supplier electronically in **FORM GST ITC-1** through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return in **FORM GSTR-3** for the month succeeding the month in which the discrepancy is made available.

Explanation: (1) Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to

match the details of corresponding inward supply declared by the recipient.

(2) Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

13. Claim of input tax credit on the same invoice more than once

Duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered taxable person in **FORM GST ITC-1** electronically through the Common Portal.

14. Matching of claim of reduction in the output tax liability

(1) The following details relating to the claim of reduction in output tax liability shall be matched under section 29A after the due date for furnishing the return in **FORM GSTR3**

(a) GSTIN of the supplier

(b) GSTIN of the recipient

(c) Credit Note date

(d) Credit Note number

(e) Taxable value (f) Tax amount:

Provided that where the time limit for furnishing FORM GSTR-1 under sub-section (1) of section 25 and FORM GSTR-2 under sub-section (2) of section 26 has been extended, the date of matching of claim of reduction in the output tax liability shall be extended to such date as may be notified by the Board/Commissioner.

Explanation: (1) The claim of reduction of output tax liability due to issuance of credit notes in **FORM GSTR-1** that were accepted by the recipient in **FORM GSTR-2A** without amendment shall be treated as matched if the corresponding recipient has furnished a valid return.

(2) The claim of reduction in the output tax liability shall be considered as matched, where the amount of reduction claimed is equal to or less than the claim of reduction of input tax credit admitted and discharged on such credit note by the corresponding recipient in his valid return.

15. Final acceptance of reduction of output tax liability and communication thereof

(1) The final acceptance of claim of reduction in output tax liability in respect of any tax period, specified in sub-section (2) of section 29A, shall be made available electronically to the taxable person making such claim in **FORM GST ITC-1** through the Common Portal.

(2) The claim of reduction in output tax liability in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier and/or recipient shall be finally accepted and made available electronically to the taxable person making such claim in **FORM GST ITC-1** through the Common Portal.

16. Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction

(1) Any discrepancy in claim of reduction in output tax liability, specified in subsection (3) of section 29A, and the details of output tax liability to be added under subsection (5) of the said section on account of continuation of such discrepancy shall be made available to the registered taxable person making such claim and the recipient electronically in **FORM GST ITC-1** through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in **FORM GSTR-3** for the month succeeding the month in which the discrepancy is made available.

Explanation: (1) Rectification by a supplier means deleting or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.

(2) Rectification by the recipient means adding or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

17. Claim of reduction in output tax liability more than once

Duplication of claims for reduction in output tax liability in the details of outward supplies shall be communicated to the registered taxable person in **FORM GST ITC-1** electronically through the Common Portal.

18. Refund of interest paid on reclaim of reversal

The interest to be refunded under sub-section (9) of section 29 or sub-section (9) of section 29A shall be claimed by the taxable person in his return in **FORM GSTR-3** and shall be credited to his electronic cash ledger in **FORM GST PMT-3** and the amount credited shall be available for payment of any future liability of interest or the taxable person may claim refund of the amount under section 38.

19. Matching of details furnished by the e-Commerce operator with the details furnished by the supplier

The following details relating to the supplies made through an e-Commerce operator, as declared in **FORM GSTR-8**, shall be matched

with the corresponding details declared by the supplier in **FORM GSTR-1**-

(a) GSTIN of the supplier

(b) GSTIN/UIN of the recipient, if the recipient is a registered taxable person

(c) State of place of supply

(d) Date of invoice of the supplier

(e) Invoice Number of the supplier

(f) Tax rate (g) Taxable value (h) Tax amount:

Provided that for all supplies where the supplier is not required to furnish the details separately for each supply, the following details relating to such supplies made through an e-Commerce operator, as declared in **FORM GSTR-8**, shall be matched with the corresponding details declared by the supplier in **FORM GSTR-1**-

(a) GSTIN of the supplier

(b) State of place of supply

(c) Tax rate

(d) Total taxable value of all supplies made in the State (e) Tax amount on all supplies made in the State:

Provided further that where the time limit for furnishing **FORM GSTR-1** under sub-section (1) of section 25 has been extended, the date of matching of the above mentioned details shall be extended to such date as may be notified by the Board/Commissioner.

20. Communication and rectification of discrepancy in details furnished by the e-Commerce operator and the supplier

(1) Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to both electronically in **FORM GST ITC-1** through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward

supplies to be furnished for the month in which the discrepancy is made available.

(3) An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in **FORM GSTR-3** for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the Common Portal in **FORM GST ITC-1**.

21. Annual return

(1) Every registered taxable person shall furnish an annual return under sub-section (1) of section 30 electronically in **FORM GSTR-9** through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner:

Provided that a taxable person paying tax under section 8 shall furnish the annual return in **FORM GSTR-9A**.

(2) Every registered taxable person whose aggregate turnover during a financial year exceeds one crore rupees shall get his accounts audited under sub-section (4) of section 42 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9B,** electronically through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner.

22. Final return

Every registered taxable person required to furnish a final return under section 31, shall furnish such return electronically in **FORM GSTR-10** through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner.

23. Details of inward supplies of persons having Unique Identity Number

(1) Every person, who has been issued a Unique Identity Number and claims refund of the taxes paid on his inward supplies, shall furnish the details of such supplies of taxable goods and/or services in **FORM GSTR-11** either directly or from a Facilitation Centre, notified by the Board or Commissioner.

(2) Every person, who has been issued a Unique Identity Number for purposes other than refund of the taxes paid, shall furnish the details of inward supplies of taxable goods and/or services as may be required by the proper officer in **FORM GSTR-11**.

24. Provisions relating to a Tax Return Preparer

(1) An application in **FORM GST TRP-1** may be made to the officer authorised in this behalf for enrolment as Tax Return Preparer by any person who satisfies any of the conditions specified below, namely:

(a) (i) he is a citizen of India;

(ii) he is a person of sound mind;

(iii) he is not adjudicated as insolvent;

(iv) he has not been convicted by a competent court for an offence with imprisonment not less than two years; and

(b) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower in rank than that of a Group-B gazetted officer for a period of not less than two years; or

(c) he has passed:

(i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or

Business Management from any Indian University established by any law for the time being in force; or

(ii) a degree examination of any Foreign University recognized by any Indian University as equivalent to the degree examination mentioned in clause (i); or

(iii) any other examination notified by the Government for this purpose;or

(iv) any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination and has also passed any of the following examinations, namely.-

(a) final examination of the Institute of Chartered Accountants of India; or

(b) final examination of the Institute of Cost Accountants of India; or

(c) final examination of the Institute of Company Secretaries of India; or

(2) On receipt of the application referred to in sub-rule (1), the authorised officer shall, after making such enquiry as he considers necessary, either enroll the applicant as a Tax Return Preparer and issue a certificate to that effect in **FORM GST TRP-2** or reject his application where it is found that the applicant is not qualified to be enrolled as a Tax Return Preparer.

(3) The enrolment made under sub-rule (2) shall be valid until it is cancelled.

(4) If any Tax Return Preparer is found guilty of misconduct in connection with any proceeding under the Act, the authorised officer may, by order, in **FORM GST TRP-4** direct that he shall henceforth be disqualified under section 34, after giving him a notice to show cause in **FORM GST TRP-3** against such disqualification and after giving him a reasonable opportunity of being heard.

(5) Any person against whom an order under sub-rule (4) is made may, within thirty days from the date of the order under sub-rule (4), appeal to the Commissioner against such order.

(6) A list of Tax Return Preparers enrolled under sub-rule (1) shall be maintained on the Common Portal in **FORM GST TRP-5** and the authorised officer may make such amendments to the list as may be necessary from time to time, by reason of any change of address or death or disqualification of any Tax Return Preparer.

(7) Any taxable person may, at his option, authorise a Tax Return Preparer on the Common Portal in **FORM GST TRP-6** or, at any time, withdraw such authorisation in **FORM GST TRP-7** and the Tax Return Preparer so authorised shall be allowed to undertake such tasks as indicated in **FORM GST TRP-6** during the period of authorisation.

(8) Where a statement required to be furnished by a taxable person has been furnished by the Tax Return Preparer authorised by him, a confirmation shall be sought from the taxable person over email or SMS and the statement furnished by the tax return preparer shall be made available to the taxable person on the Common Portal:

Provided that where the taxable person fails to respond to the request for confirmation till the last date of furnishing of such statement, it shall be deemed that he has confirmed the statements furnished by the Tax Return Preparer.

(9) A Tax Return Preparer can undertake any or all of the following activities on behalf of a taxable person, if so authorised by the taxable person to:

(a) furnish details of outward and inward supplies;

(b) furnish monthly, quarterly, annual or final return;

(c) make payments for credit into the electronic cash ledger;

(d) file a claim for refund; and

(e) file an application for amendment or cancellation of registration.

(10) Any taxable person opting to furnish his return through a Tax Return Preparer shall-

(a) give his consent in **FORM GST TRP-6** to any Tax Return Preparer to prepare and furnish his return; and

(b) before confirming submission of any statement prepared by the Tax Return Preparer, ensure that the facts mentioned in the return are true and correct.

(11) The Tax Return Preparer shall-

(a) prepare the statements with due diligence; and

(b) affix his digital signature on the statements prepared by him or electronically verify using his credentials.

25. Conditions for purposes of appearance

(1) No person shall be eligible to attend before any authority, as a Tax Return Preparer, in connection with any proceeding under the Act on behalf of any taxable person or person unless his name has been entered in the list maintained under sub-rule (6) of rule 20 .

(2) An Accountant or a Tax return preparer attending on behalf of a taxable person or a person in any proceeding under the Act before any authority shall produce before such authority, if required, a copy of the authorization given by the taxable person or person in **Form GST-TRP-6**.

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8. Articles on GST

Article	Link
States to receive compensation for revenue loss every quarter under GST	http://www.sify.com/news/states-to-receive-compensation-for-revenue-loss-every-quarter-under-gst-news-others-ql0wudcgahaic.html
Getting corporate India GST ready	http://www.business-standard.com/article/opinion/getting-corporate-india-gst-ready-115092000785_1.html
GST jitters for coporate India	http://www.business-standard.com/article/opinion/gst-jitters-for-corporate-india-115072600773_1.html
What is 'draft GST law' all about?	http://www.thehindubusinessline.com/economy/what-is-the-draft-gst-law-all-about/article7977313.ece
E-Commerce to come under GST	http://timesofindia.indiatimes.com/city/delhi/e-commerce-to-come-under-GST/articleshow/52764852.cms
GST worries Indian Industry	http://www.business-standard.com/article/economy-policy/gst-worries-indian-industry-116080800039_1.html
Draft GST law will make union territories	
tax Havens	

Time to make Compliance Better	http://timesofindia.indiatimes.com/city/nagpur/draft-gst-law-will-make-union-territories-tax-havens/articleshow/55292604.cms
An open letter to Finance Minister	
First Discussion Paper brings clarity on many issues!	http://www.business-standard.com/article/specials/time-to-make-compliance-better-116112100006_1.html
'GST Groups' - Is it good to join hands?	http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=20812
Mann ki baat on GST	http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=9917
	http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=11125
	http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=22800
Economic Survey 2014-15 - GST in spotlight	http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=22915

5 key indirect tax opportunities for new govt	http://www.deccanherald.com/content/410999/5-key-indirect-tax-opportunities.html
Economic Survey 2013-14 indicates novel GST approach	http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=20885
GST - A Solution in Indian Context?	http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=17466

9. Videos on GST

Episode	Contents	Link
16	Time of supply and input tax credit challenges	https://www.youtube.com/watch?v=L0DT5BroMM0
15	Possibility of paying GST twice	https://www.youtube.com/watch?v=t5ha6i39tPc
14	GST pe charcha (Part II)	https://www.youtube.com/watch?v=d7fQJjfKVIE
13	GST pe charcha (Part I)	https://www.youtube.com/watch?v=yU1UKJu64Fs

12	GST Law (Part II) and Report on Rate	https://www.youtube.com/watch?v=5DzP8unNEI8
11	Draft or Model GST Law Overview	https://www.youtube.com/watch?v=jhxoHVN-f-Y
10	Report on Returns	https://www.youtube.com/watch?v=8btLJNJlorM&feature=youtu.be
9	Reports on Registration, payment and Refunds	https://www.youtube.com/watch?v=QnsRoRTrkYM
8	Select Committee report	https://www.youtube.com/watch?v=ic1RnmnoEfg&feature=youtu.be
7	Passage of GST Bill in Lok Sabha	https://www.youtube.com/watch?v=gwjkARbC848
6	IGST vs CST	https://www.youtube.com/watch?v=z98RSc9Yols
5	Rate of GST	https://www.youtube.com/watch?v=4soSvY3CBo0
4	Constitutional Amendment Bill	https://www.youtube.com/watch?v=hjUCwJWKASg
3	Dual Structure	https://www.youtube.com/watch?v=aNv5HmJbHFU
2	Rational for GST	https://www.youtube.com/watch?v=kRmAc6fdwtY
1	Introduction	https://www.youtube.com/watch?v=cGeS8oP0BOI

10. Basics - Indirect Taxes

Taxes are the main source of Government revenues. Taxes can be 'direct' taxes or 'indirect' taxes. **Direct taxes** are the taxes which are levied and collected directly from the person, Company etc. When the Government collects money directly from the ultimate person/ consumer, who bears it, then it is called as 'Direct Tax'. Taxes such as Income Tax, Wealth tax are examples of direct taxes.

Indirect taxes are levied and collected from consumers **through** manufacturers, traders or service providers. Thus, in case, of the Government collects tax through a third person (such as manufacturers in excise, service providers in Service tax, traders in VAT) than the person who bears it ultimately, then it is called as 'Indirect Tax'.

In legal sense, the responsibility to pay an indirect tax rests with the manufacture/ seller/ service providers though finally the tax is collected from the consumer.

Indirect taxes are levied on activities such as manufacture, sale, trading of goods and provision of services by Central, State and Local Governments. Each time goods/ services exchange hands, typically, they are subjected to indirect tax levies and prescribed compliances[11].

From recent trends, it can be observed that there is a trend that the indirect tax rates are increasing[12] and the tax base also is being widened[13]. The following picture depicts how money is collected by Government indirectly:

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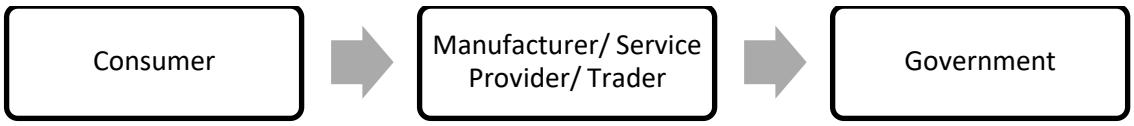
[11] Compliances will include , accounting of transaction, deposit of indirect taxes, filing of returns/ challan, exchange of declaration forms (such as C form, F form etc), claiming input tax credits, claiming available refund/ rebate, providing requested information to tax authorities etc

[12] W.e.f. 1 June 2014 rate of service tax increased from 12.36% to 14%.

[13] To broaden the tax base, w.e.f. 1 July 2012 the Central Government adopted 'Negative List



In the years to come, India proposes to revolutionise the present indirect tax system/ structure by introducing Goods and Service Tax ('GST') in India.

Given this, it is indispensable to understand the various current indirect taxes (being excise duty, VAT/sales tax, service tax, entry tax etc) and the future Indirect taxes (being Goods and Service Tax) if one wishes to take this opportunity to understand what the future indirect tax landscape offers and how to make most of it.

approach' to tax services

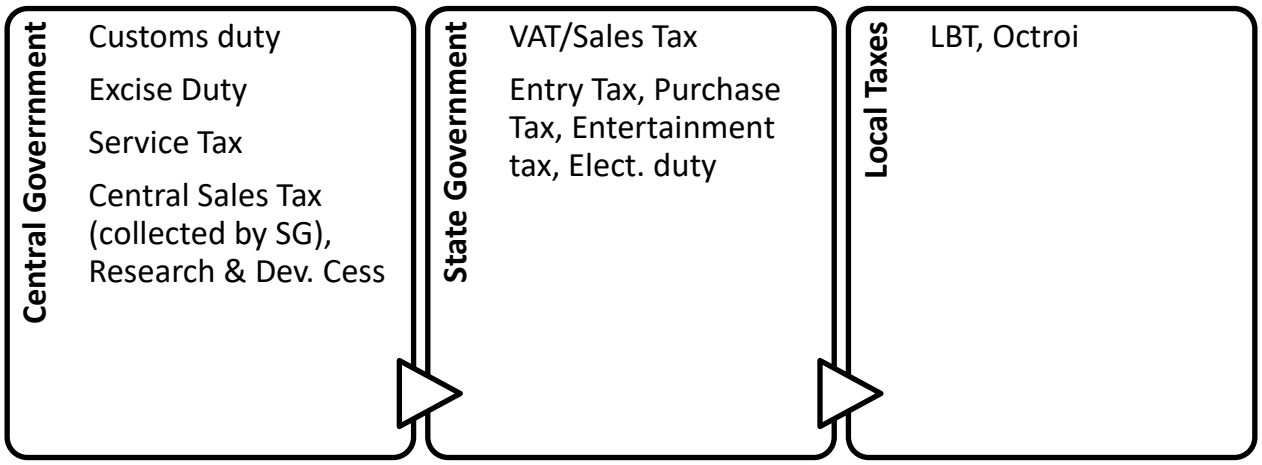
11. Existing Indirect Tax System in India

As per Article 265 of Constitution of India ***"No Taxes shall be levied or collected except by authority of law"***.

On a high level basis, indirect taxes in the country can be categorised in three baskets

- **Central Government**('CG'): CG's power includes taxes on income (except agricultural income), excise duty on goods manufactured in India (other than alcohol for human consumption), customs duty, inter-state sale of goods etc.
- **State Governments**('SG'): SG's power includes the power to tax agricultural income, excise duty on alcohol for human consumption, sales tax on intra-State sale of goods etc.
- **Local bodies** (such as municipal corporation, Panchayat etc): Local Bodies power include power to tax goods consumed in their respective area of consumption (such as Local Body Tax, Octroi etc)

The following diagram captures the aforesaid discussion:



We have discussed below key features of the aforesaid indirect taxes

SR	Indirect Tax	Key features

1	Service Tax	- Derives power from under Entry 97[14] of List I (Union List) - Service tax is levied and governed under the Finance Act, 1994 and the Rules made thereunder - Service tax is applicable on provision of all services - Service tax is not applicable on 'Negative list[15]' services and certain exempt services[16] - Service tax is payable by Service provider. However, in certain case service recipient is also liable to pay service tax[17]. - Rate of Service Tax is 14%. Further, for certain services abatement is provided[18]. Further, 0.50% Swachh Bharat Cess is also applicable.
2	Excise duty	- Union List - Entry 84 *'Duties of excise on tobacco and other goods* ***manufactured or produced*** *in India* ***except*** *(a) alcoholic liquors for human consumption;* *(b) opium, Indian hemp and other narcotic drugs and narcotics,* ***but including*** *medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry'*

[14] Entry 97 reads as '*All other matters not enumerated in List II or List III including any tax not mentioned in either of those Lists'*

[15] Negative List of services comprises of 17 services and is specified under Section 66D of FA, 1994

[16] Exemption is provided to 39 services vide Not. No. 25/2012-ST

[17] Situations where service recipient is liable to pay service tax as a recipient of service is specified in Not. No. 30/2012-ST

[18] Abatement to various services is specified under Not. No. 26/2012-ST and Service Tax (Determination of Value of Services) Rules, 2006

		- Excise duty is applicable on 'manufacture' of goods in India - 'Manufacture' typically implies a process at end the end of which a new and different article, having a distinctive name, character or use, emerges. - Excise duty is payable by the manufacturer - Rate of Excise duty is specified in the Excise Tariff - Generic rate of Excise duty is 12.5%. Further, certain goods are liable to concessional rate of Excise duty - Excise duty is levied and governed under the Excise Act, 1944 and the Rules made thereunder
3	Value Added Tax (VAT)/ Sales Tax	- VAT / Sales tax is applicable on sale of goods within a State - VAT is payable by the seller - Rate of VAT is State specific and the same is specified in VAT schedule of the State - Typically, the rate of VAT varies from 0% to 15% - VAT is levied and governed under the State specific VAT Act and the Rules made thereunder
4	Purchase Tax	- Purchase tax is applicable on purchase of specified goods - It is a major source of revenue for Punjab and Haryana - In Punjab, Purchase Tax is levied under Punjab Value Added Tax Act, 2005 - Maharashtra also introduced Purchase Tax on cotton and oil seeds
5	CST	- CST is applicable on inter –State sale of goods - CST is payable by the seller - Rate of CST is 2% provided the buyer issues C form. If the buyer doesn't issue C form then CST is

		applicable at the rate equal to rate of VAT in the State from which goods are sold - CST is levied and governed under The Central Sales Tax Act, 1956 and the Rules made thereunder
6	Customs duty	- Derives power from under Entry 83[19] of List I (Union List) - Customs duty is levied and governed under the Customs Act, 1962 and the Rules made thereunder - Customs duty is applicable on import of goods into India - Customs duty is payable by the importer on record - Rate of Customs duty is specified in the Customs Tariff - Generic rate of Customs duty is 28.85% which comprises the following: a. Basic Customs Duty (generic rate is 10%) b. Additional Duty of Customs in lieu of excise[20] (generic rate is 12.5%) c. Additional Duty of Customs in lieu of VAT[21] (generic rate is 4%) d. Customs Education cess @ 2% and Secondary and Higher Education cess @ 1%
7	Research and Development Cess	- Research and Development (R&D) cess is applicable on **import** of technology through foreign collaborator - The rate of R&D cess is 5% - R&D cess is levied and governed under Research and Development Cess Act, 1986 and the Rules made thereunder

[19] Entry 83 reads as '*Duties of customs including export duties*

[20] Also known as Counter-Veiling Duty/ CVD

[21] Also known as Special Additional Duty of Customs / SACD

8	Entry Tax	- Entry tax is applicable on entry of specified goods in the State for sale, use or consumption - Entry tax is levied by various States in India - Entry tax is levied and governed under State specific Entry Tax Act and the Rules made thereunder
9	LBT (earlier Octroi)	- LBT is levied by the Municipal Corporation on entry of specified goods in their jurisdiction for sale, use or consumption - LBT is levied by various Municipal Corporations in the State of Maharashtra (such as Mumbai, Thane, Pune etc) - LBT is levied and governed under Rules made by the Municipal Corporations
10	Entertainment tax	- Entertainment tax is applicable on movie tickets, commercial shows etc - Entertainment tax is levied by the State Govt. - The rate of entertainment tax varies from 0% to 110%[22] - This source of revenue has grown with the advent of Pay Television Services in India. Since, entertainment is being provided through the services such as Broadcasting Services, DTH Services, Pay TV Services, Cable Services, etc. - The component of entertainment is intrinsically intertwined in the transaction of service, that it cannot be separated from the whole transaction. - Given the nature of transaction of service, it is being subjected to tax by the SG and the CG both[23]

[22] Source www.filmtvguildindia.org

[23] Source www.en.wikipedia.org

12. Indirect Tax Implications On Various Transactions

Transactions in an economy are subject to various types of indirect taxes.

The generic indirect tax implications on the various transactions that take place in an economy are provided below:

SR	Activity	Tax applicable
1	Trading – Sale to a customer located in same State (Intra-State sale)	Value Added Tax[24] (VAT) would be applicable
2	Trading – Sale to a customer located in different State (inter-State sale)	Central Sales Tax (CST) would be applicable where the said transaction occasions the inter-State movement of goods
3	Manufacturing and subsequently intra-State sale of goods	- Excise duty on manufacture of goods - VAT on sale of goods

[24] Also known as Sales tax

4	Manufacturing and subsequently inter-State sale of goods	- Excise duty on manufacture of goods - CST on sale of goods
5	Provision of services	Service Tax[25]
6	Works contracts (i.e. transaction involving both goods and services)	- VAT on 'goods' portion in works contract - Service Tax on 'service' portion in the works contract
7	Transaction of sale of an **completed[26]** immovable property	Stamp duty
8	Other transactions (such as employment, donation etc)	Income from salary, donation etc is subject matter of Income Tax

Apart from the aforesaid taxes, certain States and Municipal Corporations also levy Entry Tax, LBT (earlier Octroi) for entry of goods for consumption/ sale in their respective jurisdiction.

From the aforesaid discussion, it can be observed from the above that currently the indirect tax system in the India is governed by the **'taxable events'** (such as manufacture, sale, provision of service etc).

However, the above approach to levy and collect indirect tax has its own limitations and it results in inefficiency in certain cases due to non-availability of input tax credit.

Now, GST is proposed as a solution to the above problems.

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[25] However, certain specified services such as entertainment, advertisement etc, may be liable to State VAT

[26] Service Tax and VAT has been made applicable on sale of property before completion certificate is received for the same.

13. Indirect tax inefficiencies in the current indirect tax regime

Under the GST regime, both Central Government and State Governments would levy GST on all transaction in goods and services made for a consideration. Introduction of GST will revamp the present indirect taxes (ie excise duty, VAT/sales tax, service tax, entry tax etc).

GST is different, in many ways, from the present indirect tax system. Introduction of GST is may also remove cascading effect of taxes, provide certainty in taxation and also go on to make India a preferable destination for investment.

Introduction of GST will present a window to an opportunity for the Companies which will strategically re-structure the supply chain (keeping the future changes in mind) to reduce the impact of indirect taxes.

A product or service passes through many stages till it reaches the consumer. Governments at Central and State level have, as and when the need arose, introduced many indirect taxes on various taxable events in this value chain (such as Excise duty on 'manufacture', VAT on 'sale' etc).

As these taxes are levied on different ***taxable events*** they have their limitations. To illustrate further, let's take example of Excise Duty. Excise duty is levied on 'manufacture' and thus it fails to tax the value addition at trader/retail sale level.

Additionally, at present, **'goods'** primarily suffer **two levies** (Excise duty and VAT) whereas **'services'** suffer only **one levy** i.e. Service tax. This leads to distortion: distortion arises because the relative prices of services would be lower as compared to goods.

Even though current indirect tax system treats goods and services **differently**, in certain cases there is double taxation. Software being one of such case where the industry has taken conservative stand and both VAT and Service Tax is being currently levied.

Also, there are restrictions on **availment of credit** such as a service provider cannot avail credit of VAT and a trader cannot avail credit of Service tax. Also, CST paid in case of inter-State purchase of goods is not available as set-off against output VAT liability.

Further there are multiple indirect tax compliances to be met by the client. For e.g. A manufacturer and service provider (say as a recipient of Goods Transport Agency service) will have typically following number of indirect tax deadlines to meet:

Compliance	No.
Monthly payment of excise duty	12
Monthly return of excise	12
Monthly payment of Service tax	12
Half-yearly return of service tax	2
Monthly payment of VAT (State-wise)	12
Monthly return of VAT (State-wise)	12
Monthly payment of CST (State-wise)	12
Monthly return of CST (State-wise)	12
Monthly Works Contract Tax (WCT) payment	12
Annual WCT return	1
Annual Assessment (say 1 each under Excise, VAT/CST and Service tax)	4
Departmental Audits, CERA audit etc (say 1 in a year)	1
Show cause Notice (say 1 each under Excise, VAT/CST and Service tax)	3

Total	**107**

From aforesaid it can be observed that currently multiple levies makes the assessee answerable to multiple Government Departments and meet multiple compliances/ deadlines. Surely, this adds to the cost of carrying out the business for assessee.

Check-posts[27]

> *17. Most States have put in place a system of checkposts on its road borders. Apart from other verifications which may take place, these checkposts verify and document inter-state sales of goods carried by the vehicles which cross these borders. These details are then cross verified with the VAT returns of the importing dealers. The need for such an arrangement to continue in the GST regime has been emphasized, especially in view of the abolition of CST and the possibility of tax arbitrage. However, the fact remains that such checkposts by the very nature of their operations, generate enormous delays in road traffic, sometimes upto three hours per checkpost. A freight truck travelling by road between Delhi and Chennai will need to cross five State borders and ten checkposts. Delivery times for goods may be extended significantly because of delays at checkposts. The arrangement also encourages rent seeking behavior.*
>
> *18. It may be difficult to eliminate checkposts given the valid concerns of State governments which may extend beyond collection of taxes and movement of goods to vehicle fitness examination, prevention of trafficking, collection of local cesses, etc. But what appears to be egregious is that the same vehicle has to pass through two checkposts*

[27] Relevant Extracts from the speech dated 29 June 2009 by Dr. Vijay Kelkar (Chairman, Finance Commission)

while crossing one border –the exporting States checkpost and the importing States checkpost. Both these checkposts are often located within a couple of kilometers of each other and a vehicle driver has to spend considerable time in both. Perhaps, it may be possible for both the States to put up a combined checkpost. Officials of both States could sit together and conduct their verifications in one checkpost. Or one State could handle traffic on one direction and the other State in the other direction. But essentially there would be only one check per border for a goods vehicle. Such an arrangement will significantly reduce travel time. The Finance Commission is prepared to support creation of such checkposts if the respective State governments are willing to operate jointly.

The above lacunas and multiple compliances affect free flow of goods and services. Additionally, it brings uncertainty in the trade which is not good for the economy as a whole.

GST is now being projected as a solution to all these problems.

It may be relevant here to note that as per Prof. Charles MClure, a well designed GST in the federal system, should have following six characteristics:

- Uniform rate of GST
- Minimum exemptions thereby ensuring maximum tax base
- Sales should be taxed in the jurisdiction of consumption/ destination
- Centre and State Government should set their own tax rate subject to agreed ceilings rate
- Minimum compliance cost and administration
- Co-operation between all levels of government

14. Committees on GST

Empowered Committee

Empowered Committee of 29 State Finance Minister. EC, on 10.11.2009, issued 'First Discussion Paper on GST'. This paper outlines why GST is being introduced and the basic structure of GST. Interestingly, this Discussion Paper has no statutory force.

The 13th Finance Commission (TFC) and its report

The Finance Commission is a Constitutional body set up every five years under Article 280 (1) of the Constitution of India. The 13th Finance Commission is headed by the former finance secretary Vijay Kelkar. In its report, released on 15th November 2009, THC has made following important recommendations:

- CGST rate of 5% and SGST 7% on all goods and services
- Inclusion of all of the current indirect taxes, such as purchase tax, taxes on natural gas, electricity duty, stamp duty
- Emission fuels, tobacco products and alcohol should be subject to a dual levy of GST and excise with no input credit for excise
- Exemption to:
    - Public services of Union, state and local governments,
    - Service transaction between an employer and employee,
    - Unprocessed food articles sold under the public distribution system,
    - Educational and health services provided by non-government schools, college and agencies

This report now will be submitted to the President of India on 31st December 2009. Thereafter, the President will cause every recommendation made by the TFC with explanatory memorandum on the action taken thereon before each House of Parliament (Article 281 of Constitution). Further, as TFC is a statutory body, the views of the

TFC will also need to be considered by the Finance Ministry before it finalises the structure of GST.

15. Illustrations

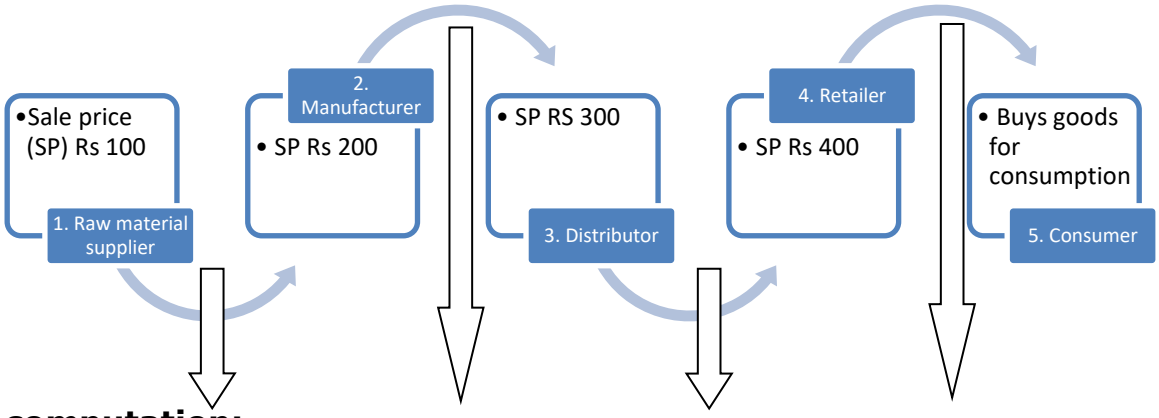
Rate assumption = CGST rate @ 10% and SGST rate 10%

Illustration A

The following example will illustrates how GST would work: Say, Mr A rents out his office to Allways Logistics Ltd. The taxable revenues and expenses are as follows:

Particulars	**Rs**
Income of Mr A	
Rent from commercial premises	1,00,000
CGST @ 10%	10,000
SGST @ 10%	10,000
Total	1,20,000
Expenses of Mr A	
Property maintenance charges (including CGST Rs 1,000 and SGST Rs 1,000)	12,000
GST payable by Mr A = GST payable less GST paid on procurement	
Output CGST Rs 10,000 – CGST Rs 1000 paid on procurements	**9,000**
Output SGST Rs 10,000 – SGST Rs 1000 paid on procurements	**9,000**

Illustration B



GST computation:

Particulars	Sale by Raw material supplier to Manufacturer	Sale by Manufacturer to Distributor	Sale by Distributor to Retailer	Sale by Retailer to Consumer
Selling price	100	200	300	400
GST payable on sale (CGST 10% + SGST 10%)	20	40	60	80
Input tax credit available (ie GST paid on purchases)	-	20	40	60
Net tax payable to Government	**20**	**20**	**20**	**20**