JANUARY, 2024

12th EDITION

BACKGROUND MATERIAL

ON

GST

VOLUME I

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

Background Material on GST

Volume I

The Institute of Chartered Accountants of India
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First Edition	:	July, 2016 (on the basis of June, 2016 MGL)
Second Edition	:	February, 2017 (on the basis of November, 2016 MGL)
Third Edition	:	May, 2017
Fourth Edition	:	August, 2017
Fifth Edition	:	January, 2018
Sixth Edition	:	May, 2018
Seventh Edition	:	March, 2019
Eighth Edition	:	November, 2019
Ninth Edition	:	July, 2020
Tenth Edition	:	January, 2022
Eleventh Edition	:	April, 2023
Twelfth Edition	:	January, 2024

Committee/Department	:	GST & Indirect Taxes Committee
E-mail	:	gst@icai.in
Website	:	https://idtc.icai.org
Price	:	₹ 1700/- (For Volume I & II)
ISBN	:	978-81-8441-869-9
Published by	:	The Publication & CDS Directorate on behalf of The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110002.

Foreword

Goods and Services Tax (GST) has truly unified India as One Nation, One Tax, One Market. The liberalised tax policy and digitisation of indirect tax regime through the various measures in GST has facilitated the *Ease of Doing Business*. The notable efforts of the tax authorities to enhance compliance and curb evasion has helped in expanding the GST net. ***Referring to GST as the "Tryst with Modernity"***, the Hon'ble Vice-President of India Shri Jagdeep Dhankhar remarked at the Global Professional Accountants Convention (GloPAC) organized by the ICAI at Gandhinagar Gujarat ***that it stands as the largest tax reform since independence, completely transforming the country's indirect taxation landscape. He also praised the Chartered Accountants fraternity for their role in shaping Goods and Services Tax into the user-friendly 'Good and Simple Tax'.***

Through our GST & Indirect Taxes Committee, the Institute of Chartered Accountants of India (ICAI), has been proactively supporting the Government by providing technical inputs on various issues in GST and has also been playing a crucial role in GST knowledge dissemination amongst all the stakeholders through its technical publications, GST Newsletter, live webcasts, e-learning, certificate courses, conferences, webinars, and programmes.

I am delighted to acknowledge the efforts taken by the GST & Indirect Taxes Committee in revising the publication **"Background Material on GST"** and coming out with its 12th edition for the benefit of the members, students and all other users. This updated material is crafted to offer comprehensive insights and direction regarding the provisions contained in the whole spectrum of GST law. The relevant provisions are presented in readily understandable language in the publication. The publication is updated with the Finance Act, 2023 along with the amendments made by various notifications issued up to 1st February 2024. The amendments proposed vide the Finance Bill, 2024, have also been covered at appropriate places.

I extend my gratitude to CA. Sushil Kumar Goyal, Chairman, CA. Umesh Sharma, Vice-Chairman, and all other members of the GST and Indirect Taxes Committee along with all those who have actively contributed to the revision of this valuable publication. Their unwavering commitment and collaborative efforts have significantly benefitted our members and other stakeholders at large.

I am positive that members will find this publication very useful in discharging their statutory functions and responsibilities in an efficient and effective manner.

Date: 07.02.2024
New Delhi

CA. Aniket Sunil Talati
President, ICAI

Preface

Goods and Services Tax (GST), the most important pillar of modern indirect tax landscape, has had quite an impactful journey in the last six and a half years since it has been introduced. The increasing GST revenue and the expanding base of taxpayers serve as clear indicators of the effectiveness of this innovative indirect tax system called GST. It has brought in various benefits like creation of national market by bringing down fiscal barriers amongst the States and has mitigated the cascading effect of taxes by allowing seamless credit of input tax across goods and services.

Through a proactive approach, the GST & Indirect Taxes Committee has been actively supporting members and other stakeholders by enhancing GST awareness and fostering skill enhancement. The Background Material on GST is a comprehensive publication that aims to elaborate the nuances of GST law through analysis, charts, tabular presentations, FAQs, MCQs, etc. at appropriate places. We are releasing the 12th edition of this publication which is updated with the Finance Act, 2023 along with amendments made by various notifications issued upto 1st February, 2024. The amendments proposed vide the Finance Bill, 2024, have also been covered at appropriate places.

We express our gratitude to CA. Aniket Sunit Talati, President, ICAI and CA. Ranjeet Kumar Aggarwal, Vice-President, ICAI, for their support and encouragement towards the Committee's endeavours. We thank all the persons who have contributed in revising this publication as also the members of our Committee, for their unstinted support in all the activities of the Committee. Last but not least, we recognize and value the indispensable technical and administrative support provided by the Secretariat of the Committee in revising this publication.

We are confident that this publication will assist readers in gaining a deep understanding of the GST law. While we have made meticulous efforts in revising this Background Material, inadvertent errors or omissions may still occur. We encourage our readers to bring the same to the attention of the Committee and share their valuable feedback at gst@icai.in. This collaboration will enable us to enhance the utility of this publication.

CA. Umesh Sharma
Vice-Chairman
GST & Indirect Taxes Committee

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Chairman
GST & Indirect Taxes Committee

Date: 07.02.2024
Place: New Delhi

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Chapter 1
Preliminary

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

Statutory Provision

1.	***Short title, extent and commencement***
(1)	*This Act may be called the Central Goods and Services Tax Act, 2017.*
(2)	*It extends to the whole of India[1][****].*
(3)	*It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:*

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

1.	*The Central Goods and Services Tax Act, 2017 has been implemented in the State of Jammu and Kashmir from 8th July, 2017 through Constitution (Application to Jammu and Kashmir) Amendment Order, 2017, the Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017.*
2.	*Certain provisions were came into force on 22nd June, 2017 and remaining provisions on 1st July, 2017 as notified by the Central Government and hence appointed day for the CGST Act, IGST, UTGST Acts, SGST Acts was 1st July, 2017. However, the appointed day for the State of Jammu and Kashmir was 8th July, 2017.*
3.	*With the Jammu and Kashmir Reorganization Act, 2019 having come into effect from 31st Oct 2019 although Presidential assent was received on 9th Aug 2019, (i) J&K GST Act is made applicable to UT of J&K and UTGST Act is applicable to UT of Ladakh (ii) 'tax period' has been amended to be from 1st Oct to 30th Oct and 31st Oct to 30th Nov vide Notification No. 62/2019-CT dated 26th Nov 2019 and (iii) special transition procedure till 31 Dec 2019 with a 'TO based credit transfer option' along with new registration in UT of Ladakh.*

[1] Omitted vide The Central Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017 w.e.f. 08.07.2017, before it was read as, "except the State of Jammu and Kashmir."

Title:

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

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

Extent:

Part I of the Constitution of India states: "Article. 1 India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides after the reorganization of J&K and unification of UT of Dadra and Nagar Haveli and UT of Daman and Diu vide Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Bill, 2019, we now have twenty-eight (28) States and eight (8) Union Territories.

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

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

Other Relevant Articles of Constitution

The readers who wish to have a deeper understanding of GST may examine the articles of the Constitution which were amended vide Constitution 101st Amendment Act, 2016 which received Presidential assent on 16.08.2016 and are relevant to GST. Brief of each is provided hereunder:

Articles 245(2): Law not invalid on ground that has extra territorial jurisdiction. Important for Place of supply – Section 11 and 13 of Integrated Goods and Services Tax Act, 2017.

Article 246: Sets out that Parliament has exclusive powers to tax activities in List I; State legislature has exclusive powers to tax activities in List II; and both have concurrent powers to tax activities in List II. GST is NOT levied under the legislative powers traceable to Art. 246.

Article 246A(1): Amendment provides notwithstanding Article 246 and subject to Article 254(2), Parliament and State legislature have power to impose tax on goods and services. Within the State, GST is levied under the law-making powers traceable to Art. 246A.

Article 246(2): Further only Parliament has powers to tax interstate activities.

Article 249: Parliament has overriding power in GST.

Article 250: Parliament has overriding power in case of emergency.

Article 254: Inconsistency in law- Parliament has powers to supersede.

Article 268: Stamp duties are in Union list- collected by State.

Article 269: Imports deemed to be inter-State activity. Inter-State taxes collected apportioned as per GST Council recommendation.

Article 269A (5): Parliament to have exclusive jurisdiction to determine inter-State character of any supply. Intelligible provisions need to be framed in this regard and not by any delegate but by Parliament itself. Although GST is understood to be a 'destination-based tax', the destination of supply is not left to be decided as a 'question of fact' but a 'question of law'. And due to the exclusive jurisdiction of Parliament (and not State Legislatures) to determine the 'destination of supply' and to this end, we find 'place of supply' provisions in IGST Act and not in CGST Act / SGST Acts.

Article 270: Distribution of taxes on stamp duties, consignment sales, surcharge or cess, CGST and IGST used for paying CGST. This is as decided by the Finance Commission.

Article 279A: GST Council composition: Chairman- Union Finance Minister; Vice Chairman- 1 chosen from among the State; Union Minister of State; and 1 Minister of Finance or other Minister of State for each State.

Article 279A(5): GST on 5 petroleum products deferred to a date to be specified by GST council.

Article 286: States cannot tax import or export or supply outside the State.

Article 366(12A): Goods and services tax means any tax on supply of goods or services or both except alcoholic liquor for human consumption.

Article 366(26A): Services means anything other than goods.

Article 366(29A): Defines 'tax on sale or purchase of goods' which was the guiding light under the erstwhile tax regime but has not been repealed on introduction of GST. Effect of its continuation on the operation of GST is on the careful disuse of this expression and use of the expression 'supply'.

Relevant Entries in Lists:

Entry 52: List II - Entry Tax (now omitted). Some legal experts have a view that States will have inherent powers as the basic structure of the Constitution cannot be changed.

Entry 54: List II - Only 5 petroleum products and alcoholic liquor for human consumption other than inter-State trade.

Entry 55: List II - Advertisement (omitted).

Entry 62: List II - Entertainment and amusement to local bodies - restricted

Entry 84: List I - Only 5 petroleum products and tobacco products continue.

Entry 92 and 92C: List I - omitted (read section 19 of Constitution 101st Amendment Act)

Commencement:

The CGST Act came into operation on 01.07.2017, the date appointed by the Central Government. However, certain provisions i.e., Sections 1,2,3,4,5,10,22,23,24,25,26,27,28,29, 30, 139, 146,164 were made effective from 22.06.2017 mainly in relation to the provisions of registration and migration.

Statutory Interpretations and Legal Maxims:

The legislations through which GST has been introduced in India has to be read considering the general principles of interpretation and may also need to follow legal maxims laid down over centuries. Some principles and legal maxims have been set out below:

(a) When reading the law the plain language is to be given effect. Meanings contrary to plain language are not permissible.

(b) Apparent omission in law cannot be made good or rectified by Courts. Necessarily to be amended by making representation (*Casus Omissus*).

(c) Purposive interpretation preferable to advance the remedy and not the mischief (*Heydon's Rule*).

(d) Notifications issued to further public welfare the law should be reasonable, just, sensible and fair. Normally not to cause hardship, inconvenience, injustice and avoid friction in the system.

(e) Law, which is vaguely worded, the entire provision can be read as a whole, harmoniously.

(f) The Act prevails over the Rule.

(g) In taxation, 'form prevails over substance' of a transaction unlike welfare legislations.

(h) Illustrations cannot modify the law.

(i) Explanation cannot expand the scope of the provision.

(j) Terms which are together, need to be of same genus (*ejusdem generis*) or gathered by the company they keep (*noscitur a sociis*)

(k) Multiple non obstante clauses, the last provision would prevail.

(l) In case of doubt, the later provision prevails.

(m) Vested rights not to be affected retrospectively.

(n) Rights once vested are indefeasible, but until they vest, rights are 'in choate'.

(o) Non-fulfilment of 'vesting conditions' become 'divesting conditions' *qua* those rights.

(p) Parliament can make law retrospectively to cure defects.

(q) Levy provisions must be interpreted to favour taxpayer, if wordings are not clear.

(r) Exemption provisions must be interpreted strictly and to favour the Revenue.

(s) Exemptions in GST cannot be notified retrospective, even if omission was erroneous.

(t) No presence of guilt needed for penalty unless specified specifically.

(u) In GST, 'burden of proof' lies on revenue to impeach liability self-assessed by taxpayer, except in case of section 155, where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

The above are some indicative principles and not exhaustive.

2. Definitions

In this Act, unless the context otherwise requires-

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

One may refer to section 3 and then section 130 of Transfer of Property Act, 1882 regarding the manner of 'transferring' actionable claims. Transfer of actionable claim can be with consideration or without consideration as per the Transfer of Property Act, 1882.

Actionable claim represents beneficial interest in movable property that is not in possession. It is an entitlement to a debt and the holder of the actionable claim enjoys the right to demand "action" against any person. Acknowledgement of liability by a creditor to honour a claim, when made, does not constitute actionable claim in the hands of such creditor. Mere right to sue is not an actionable claim. Entry ticket to a venue is actionable but that does not render it an actionable claim. Actionable claim is one which represents underlying interest in movable property though not yet in possession. Not every right is transferable, refer section 6 of Transfer of Property Act. 'Assignment' of a right is not a 'transfer' because only benefits (from a contract) can be assigned and not obligations (under that contract). Novation is also not a transfer because it involves merely 'substitution' of one of the parties with another to carry on the remainder of that contract on the same terms. Actionable claim has always been 'excluded' from the definition of goods under the earlier tax regime but in GST, it is 'included'.

The following aspects need to be noted:

- Assignment of actionable claim without permanently supplanting the holder of the claim would not be supply.
- Under the GST regime, actionable claim relating to lottery, betting and gambling alone will be regarded as 'goods' since the definition of goods includes actionable claim.

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

"Address of delivery" is relevant in the context of determining Place of Supply of goods (other than imports/ exports). Care must be taken to differentiate between 'delivery' and 'location' of

the addressee' being the recipient. Delivery is a question of law, which establishes based on the terms of contract, whether the supplier can be said to have completed obligations towards buyer. Reference may be had to some additional discussion in the context of section 10 of IGST Act where key terms such as delivery, movement, transportation and journey have been discussed. Reference may also be had to Sale of Goods Act, 1930 where section 19 states that 'property is to pass when it is intended to pass' and duties of seller and buyer are discussed in section 31 to 44 with specific reference to 'delivery' in section 33.

It is understood that the address of delivery would be a crucial pointer towards the location of goods at the time of delivery to the recipient. The place of supply of goods or services or both (other than imports/ exports) would primarily be the location of the goods or services or both at the time of delivery to the recipient.

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

'Address on record' is relevant to determine place of supply in case of supplies made by a registered person to an unregistered person in relation to services. In such cases, where the place of supply has not been specifically provided for under the law, the address available in the records of the supplier would be regarded as the place of supply. It is reasonable to expect that the 'last address' as reported by the said person would estop from claiming that, that address is no longer the correct address.

(4) "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the [2][Central Board of Indirect Taxes and Customs], the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the [3][National Appellate Authority for Advance Ruling,] the [4][Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171];

The following authorities are NOT permitted to pass an order/decision under the GST laws:

(a) The Central Board of Indirect Taxes and Customs

(b) Revisional Authority (although orders passed are appealable to Tribunal)

(c) Authority for Advance Ruling

(d) Appellate Authority for Advance Ruling (State and National)

(e) Appellate Authority

(f) Appellate Tribunal

(g) Anti-Profiteering Authority

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[2] *Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.*

[3] *Inserted vide The Finance Act, 2019 w.e.f. date yet to be notified.*

[4] *Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.*

Under the Act, the Revisional Authority, Appellate Authority and the Appellate Tribunal are empowered to pass/ issue order as they think fit, after affording the parties a reasonable opportunity of being heard and even after conducting such inquiry as may be deemed necessary. However, such powers are limited to cases where an order has been passed by an authority of a lower rank, before it becomes a subject matter of revision/ appeal. Please note that administrative circulars issued under section 168 will ONLY apply to adjudicating authorities and authorities who are excluded from the scope of this definition will NOT be subject to those administrative circulars and are free (and expected too) to form their own opinion when matters that are already dealt with in those circulars, come up for consideration in any proceeding.

(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 or both on behalf of another;

This definition appears to illustrate the principle of agency defined in section 182 of the Indian Contract Act, 1872. Agency is a relationship that can be formed validly even without consideration in terms of section 185 of the Indian Contract Act, 1872. Agent can work purely on commission basis. Even e-commerce companies may be covered in some fact situations. But the relevance of being an agent is more pronounced while examining whether a transaction between a principal and agent is itself a supply under paragraph 3, schedule I. Very often, the word agent or agency is used without necessarily implying that the transaction is one of agency as understood under Indian Contract Act such as, recruitment agency, travel agency etc. Care must be taken to identify whether the parties intended to constitute an agency as understood in law and nothing less.

Agency may be actual or implied. *Circular 57/31-2018-GST dated 04.09.2018* issued with the authority under section 168(1) of CGST Act states that entire jurisprudence of agency under section 183 of the Indian Contract Act, 1872 will operate to determine any question on agency under GST law. Agency is characterized by 'delegated authority, detached from consequences'. Agents who 'hold out' to be acting 'on their own account' will themselves be liable to registration under section 24(vii) and payment of tax under paragraph 3, schedule I (discussed later under respective provisions).

Agency is (i) actual or (ii) implied. Actions of Agents brings the principal into obligations towards third parties. Every relationship involving fiduciary duties DO NOT constitute agency. Trustee has fiduciary relationship over assets belonging to beneficiaries but actions of trustees do not create obligation onto beneficiaries towards third parties. Trustees are themselves responsible to perform all obligations towards such third parties. Trustees are merely required to act in good faith in the discharge of their application of Trust-Assets.

(6) "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

The phrase "aggregate turnover" is widely used under the GST laws. Aggregate Turnover is an all-encompassing term covering all the supplies effected by a person having the same PAN. It specifically excludes:

- Inward supplies effected by a person which are liable to tax under reverse charge mechanism; and
- Various taxes under the GST law and compensation cess.

The different kinds of supplies covered are:

(a) Taxable supplies;

(b) Exempt Supplies:
  - supplies that have a 'NIL' rate of tax;
  - supplies that are wholly exempted from GST under section 11; and
  - supplies that are not taxable under the Act (alcoholic liquor for human consumption and articles listed in section 9(2)).

(c) Export of goods or services or both, including zero-rated supplies. The following aspects among others need to be noted:
  - Aggregate turnover is relevant to a person to determine:
    - Threshold limit to opt for composition scheme: Rs. 1.50 crores (or Rs. 75 Lakhs in case of supplies effected from special category states) in a financial year;
    - Threshold limit to obtain registration under the Act: Rs. 20 Lakhs (or Rs. 10 Lakhs in case of supplies effected from Special Category States, as explained in our analysis in section 22) in a financial year and Rs. 40 lakhs for persons who are exclusively engaged in intra-supply of goods.
  - Inter-State supplies between units of a person with the same PAN will also form part of aggregate turnover.
  - For an agent, the supplies made by him on behalf of all his principals would have to be considered while analysing the threshold limits.
  - For a job-worker, the following supplies effected on completion of job work would not be included in his 'aggregate turnover' when working under section 143:
    - Goods returned to the principal
    - Goods sent to another job worker on the instruction of the principal
    - Goods directly supplied from the job worker's premises (by the principal): It would be included in the 'aggregate turnover' of the principal.
  - 'No supply' will NOT be exempt supply but still liable to be included in 'aggregate

turnover' except in cases where specifically some are considered exempt supply for purposes of section 17(2). Please refer discussion under section 2(78) on non-taxable supply for a comparative study between 'exempt supply', 'non-taxable supply' and 'no supply'.

- Activities listed in schedule III MUST be included in the definition of 'aggregate turnover'. Please consider that:
  - If activities listed in schedule III are NOT supply, then the use of the word 'supply' while listing activities in this schedule would result in irreconcilable difference;
  - Schedule III contains activities to furnish a 'fiction' to overlook specified activities which are otherwise 'transactions of supply';
  - Finding an entry in schedule III only means the fiction of 'exclusion' from being admitted as a 'transaction of supply'. It would only be required when 'any treatment' is required to be afforded to the transaction; and
  - When no 'treatment' is warranted, there is no requirement to exclude even activities listed in schedule III from the definition of 'aggregate turnover'.

  Although some experts have expressed reservation in including schedule III activities in the definition of 'aggregate turnover', there is no other satisfactory reconciliation for inclusion of supply transactions in schedule III, especially, entry 1, 7 and 8.
- There is an interesting observation that when exempt supply is first a taxable supply, then for aggregate turnover to include taxable and exempt supplies seems like a double inclusion of exempt supplies. Purposive construction leads to be understanding that no such double inclusion is required and it is to be understood as a 'specific inclusion' that aggregate turnover should not only include taxable supplies but should also include taxable supplies that are exempted.

(7) "agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land—

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;

An individual or HUF undertaking cultivation of land, whether own or not, would be regarded as an agriculturist. The cultivation should be undertaken by own labour/ family labour/ servants on wages or hired labour.

It may be noted that the scope of the definition is restricted to an Individual or a Hindu Undivided Family. Any other "person" as defined in section 2(84), carrying on the activity of agriculture will not be considered as an Agriculturist and hence will not be exempted from registration provisions as provided in section 23(1)(b) of the Act.

Agriculturist providing taxable supplies need to confirm that the aggregate turnover is not exceeded when taking a decision not to register. Everyone who owns agricultural property will not *ipso facto* be eligible for exemption from registration because other taxable supplies may necessitate registration. It is possible that a person, while being an agriculturist may also be a trader or manufacturer of taxable goods.

Please note that an agriculturist is not immune from GST in all circumstances and not all agricultural products are exempt from GST or liable to payment of tax on reverse charge basis. Care must be taken to ensure that any person claiming to be an agriculturist and claiming the favourable treatment available must ensure that there are no other transactions that may deprive the treatment otherwise available to those who are purely or entirely agriculturists. Only favourable treatment allowed to 'agriculturist' is exemption from registration under section 23(1)(b) and not exemption from tax under section 11. If for any reason, a person who is otherwise an agriculturist, has already obtained registration, experts caution that such person cannot partially avail exemption *qua* supplies as an agriculturist and remain registered *qua* all other taxable supplies, although views are divided on this point due to the words 'to the extent of' appearing in section 23(1)(b) in view of the substantive requirements in section 25(3)and agricultural products that are NOT covered under *Notification No. 4/2017-CT(R) dated 28.06.2017* will still be liable to tax on 'forward charge basis' even in hands the such registered-agriculturist, notwithstanding the (now ineffective) exemption from registration.

(8) "Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107;

It refers to an authority before whom a person aggrieved by a decision/ order under the CGST/ SGST/ UTGST Act may appeal. An order passed by the Appellate Authority would be final and binding on all the parties. If a person is further aggrieved by the order passed by the Appellate Authority, he may prefer an appeal before the Appellate Tribunal or Courts.

Please note that vide *Notification No. 4/2019-CT dated 29.01.2019*, the posts of 'Joint Commissioner Central Tax (Appeals)' and 'Additional Commissioner Central Tax (Appeals)' have been created which is a new post under Central laws. Corresponding to this, there is no post of 'Commissioner of State Tax (Appeals) has been created. It would therefore be interesting to see how the division of appeals between JC-CT (A), ADC-CT (A) and C-CT (A) would be handled by JC-ST (A) without the post of C-ST (A) in State officers. Reference may be had to rule 109A also.

(9) "Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under section 109;

It refers to an authority before whom a person aggrieved by a decision/ order under the CGST/ SGST/ UTGST Act passed by the Appellate Authority/ Revision Authority may appeal. An

order passed by the Appellate Tribunal would be final and binding on all the parties. If a person is further aggrieved by the order passed by the Appellate Tribunal, he may prefer an appeal before the High Court.

(10) "appointed day" means the date on which the provisions of this Act shall come into force;

Most of the provisions of the CGST Act are implemented with effect from 01.07.2017 with powers vested to notify different dates for effective date of commencement of different provisions of the Act.

Registration provisions were before appointed date enable easy transition.

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

The types of assessment covered under the Act are:

(a) Self-assessment (Section 59)

(b) Provisional assessment (Section 60)

(c) Summary assessment (Section 62) including best judgement assessment

The CGST Act also provides for determination of tax liability by:

(a) Scrutiny of returns filed by registered persons (Section 61)

(b) Assessment of non-filers of returns (Section 62)

(c) Assessment of un-registered persons (Section 63)

It may, however, be noted that there is no provision permitting a Proper Officer to re-assess the tax liability of taxable person. As such, reference to such re-assessment in the definition may have to be suitably read down. As per section 59, GST law follows self-assessment approach. As such, returns filed will be admitted as assessed. Tax administration is free to scrutinize returns (section 61) or conduct inspection (section 67) and issue notice (section 73-74) but there is no provision for conducting assessment except where taxable person seeks provisional assessment (section 60) in specified circumstances. Authority to pass orders in case of non-filers (section 62) or in case of unregistered persons (section 63) or in certain special cases (section 64) does not dilute the 'self-assessment' approach in GST.

Please note that 'self-assessment' is not 'unsupervised authority' to taxpayer. Section 59 does not override section 54. So, any excess payment of tax cannot be *suo moto* recovered by adjustment with other tax liability simply because of the self-assessment authority under section 59. Care must be taken to identify the extent and limits to this authority of self-assessment.

At the same time, re-assessment is NOT provided in any specific section on assessment. Hence, Proper Officer must take care NOT to carry out roving exercise to redetermine liability

except as provided in the law. Reference may be have to this aspect that is discussed in the context of section 61 to 64.

(12) "associated enterprises" shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961;

'Associated enterprise' is referred only in the context of time of supply of services where the supplier is an associated enterprise (located outside India) of the recipient (reverse charge attracted under sec 9(3)).

- In such cases, the time of supply will be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.
- This in turn means that provisional entries made at the time of closure of books of account for a year (on accrual basis) may trigger GST liability in the hands of the recipient, under section 7(1)(b).

It may be noted that in addition to associated enterprise, the Act also defines 'related person', the reference to which is made in the context of deemed supply (Schedule I) and valuation.

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

The definition of 'audit' under the Act is a wide term covering the examination of records, returns and documents maintained/ furnished under this Act or Rules and under any other law in force. Any document, record maintained by a registered person under any law can thus be called upon and audited. It becomes critical for the person to maintain true documents/ records to ensure correctness and smooth conduct of audit.

However, it may be important to note that this is neither an investigation nor an exercise to prevent leakage of revenue and may lead to verification of benefits claimed as well as payment of taxes. Audit is NOT investigation but is certainly an 'inquiry' for purposes of section 70. In other words, unlike section 66 or 67, there are no 'pre-conditions' to be shown to exist in order for selection of any taxpayer to be audited under section 65.

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

The date of credit to the account of the Government (i.e., the Central Government in respect of CGST, IGST, UTGST and CESS or the relevant State Government in respect of SGST) in the authorized bank will be considered as the date of deposit in electronic cash ledger.

(15) "authorised representative" means the representative as referred to in section 116;

An authorized representative is a person authorized on one's behalf to appear before an Officer of the Act, Appellate Authority or Appellate Tribunal in connection to proceedings under the Act. Any of the following persons can act as authorized representatives:

(a) His relative/regular employee;

(b) Practicing advocate who is not debarred;

(c) Practicing Chartered Accountant, Cost Accountant or Company Secretary who is not debarred;

(d) Retired Officer of the Commercial Tax Department of any State/ Union Territory not below the post of Group-B Gazetted Officer of 2 years' service;

(e) GST practitioner.

The following persons cannot act as authorized representatives:

(a) Who is dismissed/ removed from Government service;

(b) Who is convicted of an offence under any law dealing with imposition of taxes;

(c) Who is guilty of misconduct by the prescribed authority;

(d) Who is adjudged as an insolvent.

(16) "Board" means the [5][Central Board of Indirect Taxes and Customs] constituted under the Central Boards of Revenue Act, 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 sub-clause (a);

(c) any activity or transaction sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods 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;

(f) admission, for a consideration, of persons to any premises;

(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) [6][activities of a race club including by way of totalizator of a license to book maker or activities of a licensed book maker in such club]; and

[5] Substituted for "Central Board of Excise and Customs" vide Finance Act, 2018 w.e.f. 29.03.2018.

[6] Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

(i)	*any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*

Excise / Service tax laws do not define the term 'business'. However, it is defined under the CST Act / State VAT laws. The definition in the GST law is a modified version of the definition under CST / VAT laws, in as much as to substantially expand the scope to include among others wager, profession and vocation. This definition is very wide and covers all the transactions that were subjected to various taxes that are being subsumed in the GST Laws.

This definition assumes significance as the proposed levy is on supplies undertaken in the course or furtherance of business. The definition may be understood in two parts, namely:

(a) **General activity** - trade, commerce, etc., including incidental activities whether or not there is volume, frequency, continuity or regularity of such transactions. Principle of *ejusdem generis* provides that similar activity would be determined by the previous enumerated ones. Please consider that charitable activity would be includible in the definition of business depends on whether the 'source' of income is charitable or 'application' of income is charitable. If business-like sources are used to raise funds, such institutions may be liable to GST although these funds are not distributed to promoters but expended for purposes of the beneficiaries.

(b) **Specific activity** – acquisition of goods including capital goods, supply by association/ club, admission of persons to a premises and services by a race club.

The following aspects need to be noted:

- Business is a 'business' only when it has achieved 'income generating capacity' and until then, business is a mere enterprise that is 'innovating or exploring' possibilities. This concept of 'setting-up' of a business has been contested since 1952 in Income-tax with decisions like *Western India Vegetable Products* and *Tuticorin Alkali* and contrasted in *Bongaigaon Railway* and *Karnal Co-op*. (discussed later under section 16(1)).
- 'Wager' is also included in the definition of business to impose GST on 'organizing' betting transactions. Refer section 30 of Indian Contract Act to understand some of the peculiarities involved in the jurisprudence on 'wager';
- Clause (d) is also interesting as the words used are 'commencement of business' included in the definition of business. This expression would be of great interest while examining the 'start date' from when input tax credit may be claimed – whether from the date of formation of the entity or from the date of commencement of business by the entity. There is a lot of judicial authority in the context of section 3 and 28 of Income Tax Act where this aspect has been examined. Refer additional discussion under section 16(1) about the relevance of 'commencement' of business;
- Educational services would be covered under profession or business and even though exemption is granted in respect of education, other non-composite transactions such as sale of uniforms, notebooks or mess facilities could be covered;

- Charitable or religious activities are not specifically covered however fund raising activities from commercial activities like letting out of hoardings, sale of books could be considered as business. Exemption towards 'charitable activity' in Income-tax law attends to end-use of funds whereas GST enquires into 'source of funds' in the scope of 'charitable activities';
- Clause (e) may pose some difficulty as associations and its members enjoy immunity from taxation on transactions amongst themselves by the 'principle of mutuality'. Hon'ble SC in decision of *Calcutta Club & Ors v. State of WB* upheld this 'principle of mutuality' although that decision was delivered under the earlier laws. With the retrospective insertion of section 7(1)(aa) to the definition of 'supply', GST seeks to overcome the principle of mutuality.. In other words, contribution by members to their association is not taxable under Income-tax Act (where the said principle prevails) would still be taxable under GST although some experts opine that view expressed in *Calcutta Club's* decision has not successfully overcome the insertion of clause (aa) to section 7(1) of CGST Act. On the other hand, with the fiction of distinct person firmly embedded in GST law, continuation of 'mutuality' principle is doubted by other experts.
- Clause (g) may require understanding of employment as differentiated from profession. For instance, if a CA in practice provides services as Independent Director, the service provided by him may be treated as 'business' and not 'employment'.
- Clause (i) is also very important as 'any' activity or transaction by Government is included in the definition of business this will have far-reaching implications as the responsibility to pay tax in respect of services by Government is covered under reverse charge mechanism. Due to the expansive words used here, there is no room to differentiate payments made to any Government department on the ground that it is not 'business' activity.
- Section 2(17)(h) expanded definitions of business of a race club, this change ensures that all activities related to a race club are included in definition of business. Amendments are being made to ensure that all activities related to a race club are covered. Activities of a licensed book maker have been specifically included. (As per CGST Amendment Act, 2018). It is of great interest that Hon'ble SC in the case of *Calcutta Club & Ors v. State of WB & Ors* has held that principle of 'mutuality' has not been done away with by the 46th Amendment to our Constitution. Although this decision was rendered in the context of Sales Tax (Calcutta Club appeal) and Service Tax (Ranchi Club appeal), experts opine that the jurisprudence in this decision would apply in GST as well. With the insertion of section 7(1)(aa) read with clause 2(17)(e) and deletion of paragraph 7 in schedule II, the concept of 'mutuality' appears to be overcome for GST purposes, that too, with retrospective effect from 01.07.2017.
- Concept of effect of 'principal supply' in a 'composite supply' overriding the 'incidental supply' cannot be extended to definition of 'business'. That is, the argument that 'if the principal activity is NOT business, then all incidental activities (even if akin to business) will NOT be business' appears to be left behind by GST law. But Courts will still have a say in the matter and some experts cite *Sai Publication Trust (CA 9445 of 1996 (SC))*

as an authority in support that this jurisprudence will not be held back and will have its day in Court even in GST. Other experts express doubts over its relevance in GST as (i) amendment to definition of 'business' in Bombay Sales Tax Act, 1959 made in 1985 was taken up for consideration by SC and (ii) definition in 2(17) of CGST Act has been sufficiently covered keeping intent to overcome such authorities, is their anxious counter response.

- Once taxable person has obtained registration (after examining the applicability of definition of 'business') it does not avail for this distinct person to reapply the 'test of business' *qua* every new stream of income. As a result, all (streams of income) of them will be exposed to GST 'as if' each individual (and new streams of income) were also business activities of this distinct person even if it would not be so, had this been the sole source of income and the other taxable activity were not in existence.
- Sovereign functions are also included within this definition not so much with a plan to impose tax on Government services but to show that the bar is set so high that all other functionaries would NOT be allowed to claim exclusion from this definition when sovereign functions are also not excludable. Expanded scope of 'business' is unmistakable and if sovereign functions are admitted to fit in the definition of business all other business-like transactions cannot claim exclusion from coverage, at least not unequivocally. State is permitted to engage in commerce under Article 298.
- Overall examination of all the clauses in this section, throws some perspective as to what is the 'definition' that is being canvassed by GST law. And in this light of this insight that may be kept in mind while examining all other business-like activities of organizations that may not be organized as 'for-profit' and the title may be towards taxing transactions based on their 'business characteristics' and not the 'non business characteristics' of the form of any organization.

[7] ~~*[(18) "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.*~~

~~*Explanation—For the purposes of this clause, factors that should be considered in determining whether goods or services are related include—*~~

~~*(a) the nature of the goods or services;*~~

~~*(b) the nature of the production processes;*~~

~~*(c) the type or class of customers for the goods or services;*~~

~~*(d) the methods used to distribute the goods or supply of services; and*~~

~~*(e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;]*~~

[7] *Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.*

Note: This concept has been diluted now with any number of registrations being permitted within a State. The need for it to be a business vertical has been done away with by the Central Goods and Services Tax (Amendment) Act, 2018, with effect from 01.02.2019. Upon obtaining additional registration in the same State, credit reallocation is permitted vide rule 41A of CGST Rules.

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

An attempt has been made to align the meaning of capital goods to the generally accepted standards of accounting of what is considered as revenue and what as capital.

Goods will be regarded as capital goods if the following conditions are satisfied:

(a) The value of such goods is capitalised in the books of account of the person claiming input tax credit;

(b) Such goods are used or intended to be used in the course or furtherance of business.

The following aspects need to be noted:

(a) Assuming that the value of capital goods was not capitalised in the books of account, the person purchasing such capital goods would still be eligible to claim input tax credit on them since the definition of 'input tax' applies to goods that are not capitalized;

(b) Capital goods lying at the job-workers premises would also be considered as 'capital goods' in the hands of the purchaser as long as the said capital goods are capitalized in his books of account.

Capitalized value of capital goods may include services as an incidental component of a composite supply. Expression 'capital goods' is the identity of what is capitalized although it may come into existence along with services. There is no basis to carve out service value embedded in the capitalized value if they are principally comprised only of capital goods. In case of turnkey works contract (necessarily an immovable property) it would be deemed to be a service. Please note that CWIP may involve credits which are available immediately on their receipt (of the goods and their invoice). Therefore, one may not have to defer credit until actual capitalization in the books in view of the time restriction for taking of credit being reckoned from 'date of invoice' and not from the 'date of capitalization'.

GST law does not introduce these fine distinctions between 'yet to be' capitalized goods and 'already' capitalized goods. Any delay in capitalization can prove costly due to the time limit for taking of credit. This may be true for long-term contracts involving setting up of plants. Further, the expression 'capital goods' gives rise to some questions about 'capitalized services'. Here, it may help to note that 'input services' is not restricted to services that are revenue in nature. Capitalized services do not fail to satisfy the definition of input services. Care must be taken

while claiming credit in respect of capitalized services in case of use commonly for making taxable and exempt outward supplies.

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

A person would be regarded as a casual taxable person if he undertakes supply of goods or services or both:

(a) Occasionally, and not on a regular basis;

(b) In the course or furtherance of a 'business' that exists;

(c) Either as principal or agent or in any other capacity;

(d) In a State/ Union Territory where he has no fixed place of business.

A trader, businessman, service provider, etc. in one State undertaking occasional transactions like supplies made in trade fairs in another State would be treated as a 'casual taxable person' in that other State and will have to obtain registration in that capacity and pay tax. E.g., A jeweller carrying on a business in Mumbai, who conducts an exhibition-cum-sale in Delhi where he has no fixed place of business, would be treated as a 'casual taxable person' in Delhi.

Question that comes up for consideration if whether a person who does not undertake business activity (assume this test is satisfied), would such a person be a Casual Taxable Person (CTP) in home-State when business-like transactions are occasionally undertaken? This is not an easy question but proceeding on the basis that 'business' test is conducted and found that activity is not a business, then there is no question of registration and compliance as CTP. The next question is that in case business transactions are regularly undertaken but below threshold limit, would such a person be a CTP and if so, in the home-State or another State or both? The answer would be that due to threshold benefit, person would not be taxable person or CTP in home-State. And due to business activities in another State, CTP would be triggered in the other State subject due to fiction under section 24 leading to requirement of registration being attracted in home-State due to inter-State supplies. This leads us to a view that in order to be CTP in any State, person must already be in business in home-State, even if within threshold limit for registration, which may go away due to inter-State supplies being involved between the two branches.

The following aspects need to be noted:

- The threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover;
- He is required to apply for registration at least 5 days prior to commencement of business;

- The registration would be valid for 90 days or such period as specified in the application, whichever is shorter;
- An advance deposit of the estimated tax liability is required to be made along with the application for registration. Although, the wordings are 'estimated tax liability', it is clarified vide *Circular No. 71/45/2018-GST dated 26.10.2018* that deposit must be made of estimated 'net' tax liability after reducing estimate of available input tax credit.

(21) "Central tax" means the central goods and services tax levied under section 9;

It refers to the tax charged under this Act on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 20% and thereafter, the rates for goods and services have been notified by the Central Government based on the recommendation of the Council.

(22) "cess" shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act;

It refers to the 'cess' levied on certain supplies (inter-State or intra-State) as notified, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of GST, for a period of five years. However, through *Notification No. 01/2022-Compensation Cess dated. 24.06.2022*, the period of levy and collection of cess has been extended up to 31.03.2026.

(23) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;

(24) "Commissioner" means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;

(25) "Commissioner in the Board" means the Commissioner referred to in section 168;

It refers to the Commissioner or Joint Secretary posted in the Central Board of Indirect Taxes and Customs. Such a Commissioner or Joint Secretary is empowered to exercise the function of the Commissioner with the approval of the Board.

(26) "common portal" means the common goods and services tax electronic portal referred to in section 146;

The Common Goods and Services Tax Electronic Portal ("GST portal") is a common electronic portal set up by the Goods and Services Tax Network (GSTN) that facilitates among others registration, payment of tax, filing of returns, computation and settlement of IGST, electronic way-bill and other functions under the Act.

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

Common working days refer to such days *in succession* which are not a declared holiday for the Centre as well as State/ Union Territory.

The relevance of working days primarily arises in relation to registration provisions. Every person obtaining a registration under the Act is required to make an online application in the GST portal. The application for registration, along with the accompanying documents will be examined by the Proper Officer and if found in order, the registration will be granted within 7 working days. If the Proper Officer fails to take any action within 7 working days, the application is deemed approved.

Since the reference to 'common workings days' has been replaced by 'working days' as per rule 9(1) of the CGST Rules, 2017, it remains to be seen whether the applicant will be granted a deemed registration after 7 working days in case of inaction by the Proper Officer even if the seventh day was a holiday for a State.

(28) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980;

(29) "competent authority" means such authority as may be notified by the Government;

In terms of Explanation to entry 5(b) of the schedule II to the Act, "Competent Authority" in relation to construction of a complex, building, civil structure covers:

(a) Authority authorised to issue completion certificate (local municipal authorities like BDA/ BBMP in Bangalore, PMC in Pune)

(b) Architect

(c) Chartered Engineer

(d) Licensed Surveyor

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, 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 a principal supply.

A supply will be regarded as a 'composite supply' if the following elements are present:

(a) The supply should consist of two or more taxable supplies.;

(b) The supplies may be of goods or services or both;

(c) The supplies should be naturally bundled.;

(d) They should be supplied in conjunction (event, time or contract) with each other in the ordinary course of business.;

(e) One of the supplies being a principal supply (Principal supply means the predominant supply of goods or services of a composite supply and to which any other supply is ancillary).

The following aspects need to be noted:

- Please consider that reference to two or more 'taxable supplies' found in the definition appears as two or more 'supplies' in section 8(a). As section 8 guides the determination of tax liability based on that supply which enjoys the higher rate of tax, the definition must be read to main harmony with section 8.
- The way the supplies are bundled must be examined. Determining natural bundling must be done with caution such that two supplies occurring simultaneously ought not to be presented as naturally bundled. And any artificial bundling must be sought out with equal care as they could fall within mixed supply and not composite supply.
- Mere conjoint supply of two or more goods or services does not *ipso facto* constitute composite supply. Habitually supplied together by one firm in the industry may not be adequate to make the two supplies conjoint. Test is less about what one (or few) firms do but what is accepted in trade / expected by customers to be presently conjointly;
- The two (or more) supplies must appear natural when bundled and presented to the recipient. That is, one is the primary object of buyer but the others are for better enjoyment of that primary object and buyer never approaches supplier exclusively for this incidental supply. For example, no one goes to a super market to buy a carry bag nor will a carry bag be put up for sale but carry bag will be supplied (at extra charge or not) 'if and only if' some other articles are purchased which will be delivered in this carry bag;
- The ancillary supply becomes necessary only because of the acceptance of the predominant supply. Such predominance is neither guided by the predominant component in the total price of the supply nor guided by the predominant material involved. The test of predominance must be gathered from the 'predominant object' for which the recipient approached the supplier;
- The method of billing, assignment of separate prices etc. may not be relevant. In other words, whether separate prices are charged for each of the components of supply or a single consolidated price charged, the identity of each of the components of supply must be unmistakably distinct in the arrangement;
- The tax treatment of a composite supply would be as applicable to the principal supply; and
- It is not necessary that two (or more) supplies occurring simultaneously must be forcibly categorized as composite (or mixed) supplies. There may each be an independent supply.

Illustrations of composite supply are as follows:

(a) Accommodation with breakfast;

(b) Cocktail drink being a mixture of alcohol with a non-alcoholic pre-mix;

(c) Supply of laptop and carry case of same company;

(d) Supply of equipment and installation of the same;

(e) Supply of repair services on computer along with requisite parts comprehensive AMC;

(f) Supply of health care services along with in-patient medicaments.

It may be noted that 'buffet with alcohol' for a couple on New Year's eve for a single price could well be composite supply;

Not all supplies which are given together are composite supply merely because there are more than one taxable supplies simultaneously supplied. Unrelated, unconnected and independent taxable supplies that are supplied simultaneously for individual prices where each of them are intended to be the predominant object for which the recipient approached the supplier and may, to contrast with composite supply, be referred as non-composite supply. This is other than the mixed supply examined later.

Illustrations of non-composite supplies that are agreed under a single contract are:

(a) Construction of road or structure and maintenance of said road or structure;

(b) Sale of air-conditioner and installation;

(c) Sale of automobile parts and labour for repair/replacement;

(d) Sale of equipment of crane and operator training sessions;

(e) Sale of fruits and chocolates to same customer;

(31) "consideration" in relation to the supply of goods or services or both 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 or both, 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, in respect of, in response to, or for the inducement of, the supply of goods or services or both, 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 given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

The following aspects need to be noted:

- It refers to the payment received by the supplier in relation to the supply, whether from the recipient or any other person. Therefore, a third party to a contract can also contribute towards consideration;
- Consideration, therefore, is not the amount that the recipient pays but the total amount that the supplier collects (from all sources) whether from the recipient or any third party. This would be particularly relevant in dealing with complex arrangements in digital economy and new-age business. It is permissible under Indian Contract Act, for a 'stranger' (to the contract) to contribute towards consideration;
- Consideration can be in the form of money or otherwise. 'Otherwise' may refer to consideration that is not 'money' as defined in section 2(75). E.g.: Under a JDA model, the flats handed by the developer to the landowner would be considered as 'consideration' for the development rights given to the developer by the landowner;
- Clause (b) appears to cast the net so wide as to leave nothing to escape its grasp or almost nothing. Reference may be had to the discussion under section 15 on valuation for the far-reaching implications of the expansive language used in this clause. Sufficient to state here that every act or abstinence that is a motivation to induce a person is already consideration and there is no requirement for it to be in monetary form. The hindi expression for consideration is "Pratiphal" and inspiring in meaning. Further, the word 'uthprerna' used coveys remarkable meaning to 'inducement to supply' found in this definition;
- Unmotivated unilateral actions or gratuitous acts would not be consideration. Transactions that involve negative consideration or abstinence from doing anything are all examples of consideration due to the language in this clause. Consideration can therefore be – increase in cash or other assets, increase in debt or other liabilities or abstinence/ tolerance of any act;
- Payment of extra amount to carry out the same scope of work (already agreed for a price) is not valid and enforceable. It is well settled that there is no consideration to pay extra amount for doing what was already required to be performed. The situation would be different if the original contract were repudiated and replaced with a new contract for same scope of work but (comparatively more) consideration.
- 'No consideration, no contract; no contract, no supply' (except if specified in schedule I). Existence of consideration (whether in monetary or non-monetary form) is *sine qua non* of that contract. Lord Pollock is believed to have said that 'consideration is the price at which the promise is purchased'.
- Nominal consideration (like Re.1/- or Rs.10/-) is no consideration at all because consideration must be 'valuable', that is, what a reasonable person would consider reasonable 'by way of' consideration for the given transaction. This should not be

confused with 'adequacy' of consideration because parties are free to decide if the consideration is adequate in the contract. Once consideration is found to be valuable by a Court then the rest is left to the parties to agree upon.

- Unenforceable contract is no contract at all. Enforceability does not refer to right to sue under tort but right to sue under Contract law. If a mere promise is made to pay extra amount for same work or to pay after completion of work, these are examples of unenforceable arrangements. Once it is established under general laws that such arrangements are unenforceable, they will not attract levy of GST. If GST were to apply on every transaction of flow of money, GST would be a 'turnover based tax' and not a 'supply-based tax'.
- Deposits, as such, are not liable to tax. However, where such deposits have been applied as consideration for the supply it would tantamount to making of advances and in such cases, will be liable to tax. Merely altering the nomenclature of the payment as 'deposit' would not change the nature of the receipt. However, trade practices and the terms, used play an important role in identifying whether an amount is a 'deposit' or an 'advance' or any payment as consideration for the supply;
- Deposits would be considered to be consideration when the "supplier applies the deposit 'as' consideration". Had the proviso used the words "supplier applies the deposit 'towards' consideration", the meaning may have been limited to cases where consideration due is appropriated out of the amount held in deposit. But the usage of 'as' seems to enjoy intrinsic value in the 'eyes' of supplier in accepting the deposit. Comparative examination of transactions with / without deposit could throw some light on the 'effect' that the deposit has in the 'eyes' of supplier;
- The suppliers may have to place the deposits in a separate bank account in case of refundable deposits, to comply with this provision. However, whether the amount is refundable or not is not a criterion to determine whether such amount is a 'deposit';
- This is an inclusive definition. Please refer to any good commentary on Indian Contract Act and Special Relief Act to appreciate the depth of the words used in this definition.
- Consideration must be contrasted with 'motivation for action'. Eg., Person robs a bank to feed poor children. This is an example where the motive may be right but the action is certainly wrong. Similarly, undisclosed reasons for a persons' actions do not form consideration in a contract. That which is demanded, and its failure gives right of rescission to other party, will be the consideration in that contract, even if it is implied and not express contract.
- Compensation is not consideration. This view has been endorsed by CBIC in *Circular No. 178/10/2022-GST dated 03.08.2022* but it very briefly lays out the underlying principle and at times appears to miss that principle. If 'quid pro quo' is the appropriate test of consideration, payment made that (i) did not originate at the demand of the Promisor (Payee of compensation) and (ii) failure to make such payment by (or on behalf of) Promisee (Payer of compensation) would result in rescission and refusal

to perform (if not already performed) the agreed obligations under the contract by such Payee, would form consideration. Merely calling the payment received as 'compensation' without satisfying the underlying principle would not make it compensation. Consideration, in the words of Lord Pollock is *"the price at which the promise is purchased"*.

- Damages is another form of compensation which may be agreed within the contract and is known as 'liquidated damages' or awarded by a Court without the contract (for being terminated) and is known as 'unliquidated damages'. Where the amount agreed is in respect of a collateral object contained in the same contract document, would still be consideration even if there is a low likelihood of occurrence of that collateral object. Entry 62 to *Notification 12/2017-CT(R) dated 28.06.2017* where exemption is granted to liquidated damages payable under a Government contract is a good example of liquidated damages being consideration and not compensation when a collateral object is contemplated in the same contract document. Damages awarded outside of the contract in order to bring restitution to the affected Party is not compensation for the reason that the extent of injury-to-be-suffered in every eventuality, cannot be reliably measured beforehand and provided in the contract. Such pre-determined extent of liquidated damages requires more careful examination of the existence of a collateral object and not dismissed as compensation.
- While the purpose of entering into a contract is not to breach it, change of circumstances that renders its performance unviable would make breach (with payment of agreed damages) a better alternative. And entering and exiting contracts is common in business. And when business transactions form the centrepiece of GST law, common-sense understanding of 'breach' would be unreliable. Reasonable understanding of breach or any other expression must not be a layman's understanding but one that prevails in the opinion of persons involved in that trade. See Bolam's test of reasonableness.

(32) "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 and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

It basically refers to supply of goods continuously or on recurrent basis under a contract, with periodic payment obligations.

(33) "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 services as the Government may, subject to such conditions, as it may, by notification, specify;

It refers to supply of services continuously or on recurrent basis under a contract for a period exceeding 3 months, with periodic payment obligations.

The determination of stage of completion of services is an abstract one, unless specifically defined by contract, unlike in the case of goods where the volume of goods supplied can be easily tracked/ identified. Hence, a contract for supply of service spanning over a definite period has been treated as a continuous supply, so that the tax dues are collected periodically.

The law categorically provides for time limit to issue invoices as under:

(a) where due date of payment is ascertainable: On or before the due date of payment;

(b) where the due date of payment is not ascertainable: Before or at the time of receipt of payment;

(c) where the payment is linked to the completion of an event (milestones): On or before the date of completion of that event.

The following aspects need to be noted:

- It should be a contract for supply on a recurrent basis and cannot be a one-time supply contract.
- The period of contract of supply should be more than 3 months - viz., services should be supplied on a recurring basis for at least 3 months;
- The contract should be a case of periodic billing and periodic payments - viz., the billing and receipts thereto should be on a periodic basis (say for e.g.: every fortnight; every Monday etc.) and not one-time. Further, the contract should specify this periodicity/ frequency of billing/ payment;
- The Government is empowered to notify certain supplies as continuous supply of services.

Examples of continuous supply of services are:

(a) Annual maintenance contracts because it comprises of supply of assurance of regular upkeep, supply of parts for repairs and supply of labour for such repairs. However, where invoice is issued at the start of this contract period, time of supply get determined based on the billing and does not get deferred based on the milestones in the contract;

(b) Works contracts.

It may be noted that at times the accounting standard on revenue recognition may be at variance with the time of supply in GST and that incongruity does not imply error in either treatment.

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

It can be understood as a means of transportation.

*(35) "cost accountant" means a cost accountant as defined in [8]**~~[clause (c)~~ clause (b)]** of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;*

(36) "Council" means the Goods and Services Tax Council established under article 279A of the Constitution;

GST Council is an authority constituted under the Constitution of India and will be the governing body responsible for the administration of the GST across India. The administrative powers will be vested with this authority for taxing goods and services.

The Council will consist of the Union Finance Minister (as Chairman), the Union Minister of State in charge of Revenue or Finance, and the Minister in charge of Finance or Taxation, or any other nominated by each State government, thereby ensuring a proper blend of the Central and State ministry.

The GST Council will be the body responsible for the following (primarily):

(a) Administration of the GST laws

(b) Specify the taxes to be levied and collected by the Centre, States and Union Territories under the GST regime

(c) Specify the goods or services or both that will be subjected/ exempted under the GST regime

(d) Specify the GST rates

(e) Specify the threshold limits for registrations and payment of taxes

(f) Apportionment of IGST between Centre and States/ Union Territories

(g) Approval of compensation to be paid to the States (for loss on account of implementation of GST)

(h) Levy of any special rate or rates of tax for a specified period, to raise additional resources during any natural calamity or disaster.

(i) Resolution of disputes arising out of its recommendations

(j) Imposition of additional taxes in times of calamities and disasters

(37) "credit note" means a document issued by a registered person under sub-section (1) of section 34;

A credit note can be issued by a supplier only in the following circumstances:

(a) The taxable value shown in the invoice exceeds the taxable value of the supply;

(b) The tax charged in the invoice exceeds the tax payable on the supply;

[8] *Substituted vide The Central Goods and Services (Amendment) Act, 2018 w.e.f. 01.02.2019.*

(c) The goods supplied are returned by the recipient;

(d) The goods/ services are found to be deficient.

The following aspects need to be noted:

- Where there is no change in the taxable value/ tax amount, a credit note must not be issued unlike normal existing business practices;
- A credit note has to be issued by the supplier only and no other person is permitted;
- A credit note issued by a recipient, say for accounting purposes, is not a relevant document for GST purposes; In business, at times the supplier may only issue a financial credit note i.e. only for the basic value without including the GST component. Such financial credit notes are recognized in *Circular 72/46/2018-GST dated 26.10.2018* where it is stated that such credit notes 'need not' be uploaded on the portal. As such, the GST paid on the original supply will not be available to be adjusted;
- Once a credit note is issued, the details of the credit note should be declared by the supplier in the return of the month of the issue of credit note. However, if not declared in that month, it can be declared in any return up to 30th November of the year following the year in which the original tax invoice was issued (or filing of annual return, whichever is earlier);
- The supplier would not be permitted to claim reduction in the output tax liability if the incidence of tax and interest has been passed on to any person, or if the recipient fails to declare the details of the credit note in his returns;
- The issuance of credit note would not be relevant if the recipient treats the return of goods as an outward supply and raises a tax invoice in this regard;
- Issuance of credit note admits that original invoice was in error and begs a detailed enquiry. Of all things that may be done carelessly, it is least likely that invoice will be issued without due care. But after issuing invoice carefully, if a credit note (for base value of supply and not for error in tax charged) is necessitated, it casts a cloud of suspicion over the value of invoice. Reference may be had to the principle that after one person has performed contracted obligations and supplied goods or services, other party who is required to pay for the supplies cannot pay less than what was agreed. It gives rise to remedy of specific performance plus damages for attempting to pay less (as per Indian Contract Act read with Specific Relief Act). Please also note section 63 of Indian Contract Act where partial performance may be accepted. But GST does not entertain such overriding reduction because partial performance was after and not at the time of supply;
- Credit note that is issued in any other circumstance (not permitted by section 34) would not be permissible and make itself indicate a cross-supply in the opposite direction (requiring an invoice under section 31). Care should be taken while examining any

practice of issuing financial or accounting credit note that is not in accordance with section 34. Also note that as per Table 5J in GSTR 9C, such credit notes (not permitted by section 34) are to be separately reflected in the reconciliation and output tax must be shown to be paid on the original supply value.

- Financial or accounting credit note is an invention of accountants who need a document to give credit in the ledger account, when the amount billed will not be received and balance cannot be carried forward. Credit note that is NOT in conformity with section 34 is entitled 'financial or accounting credit note'. GST acknowledges no such document and references in circulars is only to state that such documents exist and are non-existent for purposes of section 34 and for treatment thereunder.

(38) "debit note" means a document issued by a registered person under sub-section (3) of section 34;

A debit note should be issued by a supplier in the following circumstances:

(a) The taxable value shown in the invoice is lesser than the taxable value of the supply; or

(b) The tax charged in the invoice is less than the tax payable on the supply.

The following aspects need to be noted:

- Where there is no change in the taxable value/ tax amount, a debit note must not be issued;
- A debit note has to be issued by the supplier. A debit note issued by a recipient, say for accounting purposes, is not a relevant document for GST purposes;
- The details of the debit note have to be declared by the supplier in the return of the month of the issue of debit note;
- Debit note includes a supplementary invoice.
- Debit note does not have its own 'time of supply' or 'HSN' classification.

(39) "deemed exports" means such supplies of goods as may be notified under section 147;

Deemed exports are those supplies of goods that are notified as 'deemed exports' where:

(a) The goods supplied do not leave India;

(b) Payment for such supplies is received in Indian Rupees/ Convertible Foreign Exchange; and

(c) Such goods are manufactured in India.

The definition of 'deemed exports' under this Act is in line with the definition of 'Deemed Exports' under Chapter 07 of the Foreign Trade Policy, 2023. 'Deemed Export' under the FTP 2023 covers supply of goods to EOU/STP/EHTP/BTP, supply of goods under advance authorisation etc. and hence, provides for refund, drawback and advance authorisation to the

supplier of goods. On the other hand, the relevance of 'deemed export' under the GST laws is limited to the grant of refund of taxes on supply of goods as 'deemed export'.

Therefore, a provision has been made under the Act to notify certain transactions as 'deemed export' to avoid situations where the persons might claim refund of taxes on 'deemed export' defined in the FTP, 2023. While deemed exports may be notified under section 147, the nature of benefit available in respect of deemed exports requires a provision in the Act conferring such entitlement. Section 54 would be the machinery provision for disposal of refund applications. And deemed exports will not come within the scope of section 54(3).

(40) "designated authority" means such authority as may be notified by the Board;

Currently, the term does not find a reference in the Act and will be notified by the Board from time to time.

(41) "document" includes written or printed record of any sort and electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000;

An electronic record, in terms of section 2(1)(t) of the Information Technology Act, 2000 means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated micro fiche. A document includes both manual and electronic forms of records. This is an important provision that can play a significant role going forward bringing various electronic communications within the scope of admissible documentary proof of the underlying transaction. Digitally signed documents are also admissible but using words such as 'the season electronically generated document and does not require signature' do not enjoy the status of being an admissible document. Reference may also be had to section 145 of CGST Act which talks about admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence.

(42) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods;

This is relevant to understand the contours of refund under the GST laws. Refund of unutilized input tax credit is allowed in case of zero-rated supplies (including exports) and inverted tax rate structure. The law provides that refund of unutilized input tax credit will not be allowed if the supplier has availed drawback of such tax.

(43) "electronic cash ledger" means the electronic cash ledger referred to in sub-section (1) of section 49;

Electronic cash ledger means a cash ledger maintained in electronic form by each registered person. The amount deposited through various modes of payment (viz., internet banking, debit/ credit cards, NEFT/ RTGS or by any other mode), shall be credited to the electronic cash ledger. The amount available in this ledger can be used for the payment of:

(a) Tax

(b) Interest

(c) Penalty

(d) Fees or

(e) Any other amount payable.

(44) "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

Physical stores/ outlets that supply goods or services or both with the help of a digital network which is facilitated by a third party will fall within the scope of this definition. Electronic commerce is not to be understood as the activity of the operator of the digital network alone. Some experts believe that there is a certain amount of ambiguity as to whether a platform run by a person to supply own goods or services would also be covered in this definition.

Digital or electronic network does not always mean website on mobile app. A telephone network or a call centre using the fancy/easy number can also constitute digital or electronic network.

(45) "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

It includes every person who, directly or indirectly, owns, operates or manages a digital/ electronic facility or platform for supply of goods or services or both. There is a certain ambiguity as to whether persons engaged in supply of such goods or services on their own behalf would also be covered in this definition.

While an aggregator only connects the customer with the supplier/ service provider, an e-commerce operator facilitates the entire process of the supply of goods/ provision of services. Under the GST law, even aggregators would be covered under the definition of 'electronic commerce operator'. Where such operators fall within the operation of 'agent' under schedule I, then the fiction under section 7(1)(c) would prevail and operate. Care must be taken to identify which activities of the enterprise falls within section 9(5) or section 52 and which ones under the said fiction of schedule I.

Setting up a website by a supplier for 'own use' also comes within the scope of this definition, however the compliances that are triggered by being such an electronic commerce operator under section 52 cannot be attracted unless there are three distinct persons – customer, supplier and electronic commerce operator. A supplier creating an online channel for sale of product in addition to his off-line retail chain of stores is included in the definition of electronic commerce operator. The implications of being an electronic commerce operator will apply in such cases only if the distinct person who owns or manages the electronic or digital network and the distinct person who stores and distributes the product are independent of each other. Also, every internet-linked transaction would not be e-commerce as the website may merely be an information portal without concluding any specific transaction of supply.

It may be noted that the threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover;

(46) "electronic credit ledger" means the electronic credit ledger referred to in sub-section (2) of section 49;

Electronic credit ledger means the input tax credit register required to be maintained in an electronic form by each registered person.

The electronic credit ledger will be debited with the amount of tax liability so adjusted against the input tax credit lying in the ledger, and will stand reduced to the extent of the claim of refund of unutilised input tax credit, if any.

The amount of CGST credit available in this ledger can be used only towards discharging the liability on account of output tax under CGST/ IGST/ UTGST law only. Similarly, the amount of credit of other GST taxes can be used only towards discharging the liability of taxes under the GST laws, and not towards payment of interest, penalty or other sums due.

It is relevant to note that since 'output tax' excludes tax payable under reverse charge basis, and tax payable under reverse charge basis must be discharged by cash only and credit cannot be utilized for discharging such a liability. This has been expressly stated in *Circular No. 172/4/2022-GST dated 06.07.2022.*

(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

The meaning of exempt supply is like the meaning assigned to it under the UTGST law with the exception that supplies that are partly exempted from tax under this Act will not be considered as 'exempt supply'. On the contrary, partially exempted supplies would be considered as 'exempt supplies' under the UTGST Act.

Exempt supplies comprise the following 3 types of supplies:

(a) Supplies taxable at a 'NIL' rate of tax;

(b) Supplies that are wholly exempted from CGST or IGST, by way of a notification. Please note that supplies liable to concessional rate of tax under *Notification No. 11/2017-CT(R) dated 28.06.2017* wherein explanation 4(iv)(b) states that such supplies are to be treated 'as if' exempt supplies but only for purposes of credit reversal under section 17(2) of CGST Act. Therefore, care must be taken to include only those supplies that are wholly exempt from tax and not partly exempt as discussed *ibid*;

(c) Non-taxable supplies as defined under section 2(78) – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).

The activities covered under schedule III which are neither a supply of goods nor a supply of services would NOT be included in 'exempt supply'. When they are NOT SUPPLY then they

cannot be 'exempt supply' except when they are specifically listed for purposes of treatment under section 17(2), namely, sale of land and sale of completed building, in-bond sales[9] but not in other cases, such as high-sea sales, and merchanting trade transactions.

However, please note the usage of the word 'supply' while stating they are 'not supply' means that the said transactions are firstly a 'supply' but when some 'treatment' is required to be given to those transactions, the fact that they are otherwise a supply is required to be ignored. For example, sale of land or high-sea sales would be included in aggregate turnover for purposes of examining registration or audit threshold but, excluded when giving 'treatment' under, say, section 17(2). Reference may be had to explanation (inserted by CGST (Amendment) Act, 2018) to section 17(3).

'Pure agent' transactions are NOT exempt supply (they are given the name 'no supply' in GSTR 9 in Table 5). Subsidy received from Government is not includible in the transaction value as per section 15(2)(e) and is also NOT an exempt supply as it is merely a valuation adjustment for computation of tax payable and not a supply on its own to be even taken for consideration whether it is an exempt supply or not. Also, the 1/3rd abatement towards value of land allowed in *Notification No. 11/2017-CT(R) dated 28.06.2017* was NOT part of exempt supply as such this was also a valuation adjustment until entry 16(ii) was inserted in *Notification No. 11/2017-CT(R)* to make this 1/3rd abatement of value to be a 'nil' rated supply. Also note that entry 24 is the only other 'nil' rated supply notified under section 9(1) and not under section 11(1) of CGST Act.

Note: The definition of exempt supply for the purpose of reversal of input tax credit is different. Refer detailed discussion under section 17(3), rule 42 and rule 45. The following aspects need to be noted:

- Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;
- Input tax credit attributable to exempt supplies will not be available for utilisation/ set-off. But input tax credit attributable to schedule III transactions will not be barred as those transaction are not supply at all except those specified in paragraph 5 of the said schedule.
- Also, please note that 'sale of business as going concern' is treated as a supply of services (even though it involves goods like inventory or assets). This is an exempt supply under sl.no.2 to *Notification No. 12/2017-CT(R) dated 28.06.2017* but paragraph 4(c) to schedule II eclipses this specific transaction from being treated as one or other form of supply. With the credit being permitted to be transferred by section18(3), it appears that this is one example of a supply, although expressly exempt, would 'not' require reversal of credit under section 17(2).

[9] *Included in the definition of Exempt Supply for the purpose of section 17(2) vide The Finance Act, 2023 notified through Notf No.28/2023-CT dt. 31.07.2023 w.e.f. 01.10.2023.*

(48) "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;

This covers all the erstwhile Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law, Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as the Indian Stamp Act, 1899, would not be covered here.

(49) "family" means, —

(i) the spouse and children of the person, and

(ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

The relevance of the term 'family' is to:

- Understand whether two persons are related persons under the Act and the consequential valuation provisions applicable in case of related persons;
- Examine whether a person is an agriculturalist as defined under section 2(7) of the Act.

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

The following three elements are critical to determine whether a place is a 'fixed establishment':

(a) Having a sufficient degree of permanence;

(b) Having a structure of human and technical resources; and

(c) Other than a registered place of business.

The following aspects need to be noted:

- A Fixed Establishment (FE) refers to a place of business which is not registered;
- But one where the person undertakes supply of services or receives and uses services for own needs in such place;
- Care must be taken that fixed establishment should NOT be registered as ISD location;
- Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person. Factors such as premises in occupation, staff locally employed for sufficient duration, administrative establishment to make nearly independent decisions to 'supply and receive' services and limited or specific extent of involvement from registered place of business are all relevant to make such determination;

- Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment. Even extended duration of site camp may not meet the requirements to constitute FE by itself;

E.g.: A service provider in the business of renting of immovable property has his registered office at Bangalore (place of business) and the property for rent is located in Chennai (place of supply). In this case, the registered office will be the principal place of business but the property in Chennai will NOT be regarded as a fixed establishment of the service provider as the degree of permanence required in representing the interests of the supplier does not exist in Chennai.

E.g.: A contract is for supply and installation of equipment where the duration of installation work at the site is (say) 15 days at Indore and the fabrication of equipment undertaken at the factory at Jaipur. After the fabrication is completed, the material is transported to the site along with installation team. For the limited duration that the installation team will be present at the site (Indore), surely the supplier will not put in place all the resources – technical and human – so as to create at the site an establishment with sufficient degree of permanence 'to supply' or 'to receive' services. In this case also, the factory will be the principal place of business (Jaipur) but the site (Indore) will NOT be regarded as a fixed establishment of the supplier.

E.g.: A project undertaken for construction of a highway (expansion, strengthening and resurfacing of two-lane carriageway into four-lane carriageway) is expected to be undertaken over a three-year duration in Gandhidham. As such, the supplier cannot practically manage to undertake the activities that the project site (entire length of the alignment) remotely from the registered office in Delhi. Although all decisions are authorized by the central team in Delhi, these decisions are effectively delegated to be carried out by it competent team located at the site with all necessary resources – technical and human – so as to create the site and establishment with sufficient degree of permanence 'to supply' or 'to receive' services. In this case, the site (Gandhidham) would be a fixed establishment of the supplier.

E.g.: Permanent Establishment (PE) admitted to be constituted under the DTAA of India with that country, will be a 'fixed establishment' due to admission of this fact made to another regulator *albeit* of a foreign jurisdiction. Read together with explanation 1 and 2 to section 8 of IGST Act, transactions of any distinct person in India with that PE-FE will entail 'deemed supplies' under section 7(1)(c) read with paragraph 2, schedule II. Constitutional limitation on extra-territoriality in Article 245 will not impose GST on the PE-FE but the transactions of any distinct person with that PE-FE cannot be ignored merely because the financial results of that PE-FE will be consolidated with that of the distinct person when the Legal Entity reports is global results. Choice to constitute a PE and not establish a subsidiary in the foreign jurisdiction is taken by the Legal Entity in India and GST implications based on the legal fiction is an outcome of that choice and not an interpretation of GST law.

(51) "Fund" means the Consumer Welfare Fund established under section 57;

This refers to the Consumer Welfare Fund constituted by the Government where the unutilized input tax credits of a person will be credited if an application to that effect has been made. The amount will be credited to the Fund only upon an order being passed by the Proper Officer after being satisfied that the amount claimed as refund is refundable.

(52) "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;

The following aspects need to be noted:

- Although various courts have held that the term 'goods' includes actionable claim under the VAT laws, as trade practice, actionable claims were kept outside the taxation net under the earlier laws. Now, the GST law seeks to change this understanding by including actionable claim in the definition of goods. Thus, under GST laws, actionable claims would be goods;
- The words 'but includes' is an exception to the "exclusion" of money and securities. In other words, if the actionable claim represents property that is money or securities, it can be held that such forms of actionable claims continue to be excluded;
- Actionable claim, other than lottery, betting and gambling will not be treated as supply of goods or services by virtue of schedule III (Activities or transactions which shall be treated neither as a supply of goods nor a supply of services);
- Intangibles like MEIS/SEIS scrips, copyright and carbon credit would continue to be covered under 'goods'.
- An actionable claim which is excluded from definition of goods under Sale of Goods Act is specifically included in the definition of goods in CGST Act.
- Standing crop is goods but growing crops is not goods (and hence services). As to whether a contract for lease of forest land is one for sale of standing crop (goods) or for exploitation of benefits arising from that land (crops yet to grow), depends on the terms of contract especially the tenure of contract. But, care must be taken that contract similar in all respects except tenure and consideration may tilt from goods to services.
- The words "*which are agreed to be severed before supply or under a contract of supply"* will qualify. Rule of Last Antecedent (RLA) – a rule of interpretation of statutes states that words of qualification (WoQ) will apply to the last precedent unit (out of the entire population). If it is interpretation that these WoQ will apply (i) only to "*things attached to or forming part of the land"*, then growing crops and grass will also be goods even though they are attached to the earth or (ii) to all the words in the definition, then there is no indication that these WoQ should exclude 'actionable claims'. It appears that interpretation based on RLA seems a reliable interpretation. Reference may be had to the use of 'oxford comma' in English grammar for forming sentences.

- Goods are first 'property', whether (i) tangible or intangible (ii) animate or inanimate (iii) incorporeal but vested indefeasible rights. Any article that is not 'property' cannot be goods, whether or not it is tangible. Property is that which is legal property. Eg., Pet animals are property but wild animals are no one's property, not even of the State. Lawful property must vest in someone, that is, the owner. Without an owner too, there cannot be property. Owner has Rights in respect of the Property. And these Rights are 'rights' only when they are 'enforceable' against the whole world. Unenforceable rights may be conveniences but, not rights. Unenforceability is not limited to illegal objects. Unenforceable conveniences even if accepted in society will be 'assets' under AS10 or IndAS16 but merely expenses (which cannot even be pre-paid due to uncertainty over their future realizable value). Crypto-articles are unenforceable because they are (i) not recognized as legal tender and (ii) infringement cannot be stopped with the assistance of the State machinery. Reference to crypto-articles in Income-tax Act as virtual digital 'assets' does not mean they are assets or goods because Income-tax Act is not the basis for classification of assets and liabilities.
- Refer also to a comparative discussion under section 2(102) of 'services'.

(53) "Government" means the Central Government;

While this definition does not seem to say much, but care must be taken to identify that Government includes all 'instrumentalities' of the Government in the form of Boards, Authorities and Departments. Entities formed by an Act of Parliament or under Companies Act will NOT be Government itself in GST although the jurisprudence under Art.12 of our Constitution goes a long way in guiding our application of this definition in the context of understanding exclusions in schedule III or exemptions for Government services or identifying which supplies come with the scope of entries in schedule XI and XII in our Constitution. Refer discussion under 2(9) of IGST Act also defining 'Government'. A reasonable test to apply is to inquiry into the following four categories of criteria (also see discussion under section 2(69)):

Financial dependence on State: ➢ Entire capital owned by State ➢ Losses are a charge to Consolidate Fund ➢ Employees, servants of State	Entity is instrumentality of State: ➢ Functions previously vested in Ministry ➢ Public welfare is object of enterprise ➢ Activities akin to schedule XI and XII
State enjoys plenary control over management: ➢ Board appointed by State not by contract ➢ Board compensation dictated by State ➢ Veto power traceable to State-functionary	State monopoly over occupied field: ➢ Custodian and user of public resources ➢ Liquidation estate vests with State ➢ Participation by private enterprise barred

It is also important to refer to Article 298 where State is empowered to engage in 'trade or commerce'. And stock-in-trade of the State are the natural resources of the Nation which are employed gainfully by State Enterprises or licensed to Private Enterprise. Therefore, State does not engage exclusively in Sovereign functions. 'Sovereign functions' does not refer to 'all' functions by the Sovereign. Non-sovereign functions performed by the Sovereign will be exposed to incidence of GST.

Sovereign functions assigned to Panchayat and Municipality are listed in schedule XI and XII of the Constitution. And when even these instrumentalities engage in transactions that are NOT within the pith of these activities, they will be exposed to the incidence of GST.

ELEVENTH SCHEDULE (Article 243G)	TWELFTH SCHEDULE (Article 243W)
1. Agriculture, including agricultural extension.	1. Urban planning including town planning.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.	2. Regulation of land-use and construction of buildings.
3. Minor irrigation, water management and watershed development.	3. Planning for economic and social development.
4. Animal husbandry, dairying and poultry.	4. Roads and bridges.
5. Fisheries.	5. Water supply for domestic, industrial and commercial purposes.
6. Social forestry and farm forestry.	6. Public health, sanitation conservancy and solid waste management.
7. Minor forest produce.	7. Fire services.
8. Small scale industries, including food processing industries.	8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Khadi, village and cottage industries.	9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Rural housing.	10. Slum improvement and upgradation.
11. Drinking water.	11. Urban poverty alleviation.
12. Fuel and fodder.	12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Roads, culverts, bridges, ferries, waterways and other means of communication.	13. Promotion of cultural, educational and aesthetic aspects.
14. Rural electrification, including distribution of electricity.	14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Non-conventional energy sources.	15. Cattle pounds; prevention of cruelty to animals.
16. Poverty alleviation programme.	16. Vital statistics including registration of births and deaths.
17. Education, including primary and secondary schools.	17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Technical training and vocational education.	18. Regulation of slaughter houses and tanneries.
19. Adult and non-formal education.	
20. Libraries.	
21. Cultural activities.	
22. Markets and fairs.	
23. Health and sanitation, including hospitals, primary health centres and dispensaries.	
24. Family welfare.	
25. Women and child development.	
26. Social welfare, including welfare of the handicapped and mentally retarded.	
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.	
28. Public distribution system.	
29. Maintenance of community assets.	

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

The Goods and Services Tax (Compensation to States) Act (for brevity "Compensation Act") provides for compensation to the States for the loss of revenue arising due to implementation of GST for a period of 5 years from the said date of implementation. The cess paid on the supply of goods or services will be available as credit for utilization towards payment of said cess on outward supply of goods and services on which such cess is leviable.

The GST Council in its 45th meeting held on 17.09.2021 has decided that collections from Compensation Cess in the period beyond June 2022 till April 2026 would be exhausted in repayment of borrowings and debt servicing to bridge the gap made in 2020-21 and 2021-22 and its applicability for other purposes has been deferred till April 2026, notified through *Notification No. 01/2022-Compensation Cess dt. 24.06.2022*, the period of levy and collection of cess shall be up to 31.03.2026.

(55) "goods and services tax practitioner" means any person who has been approved under section 48 to act as such practitioner;

A goods and services tax practitioner (GST practitioner) is a person who can undertake the following activities on behalf of a registered person (if so authorized):

(a) Furnish details of outward and inward supplies;

(b) Furnish monthly, quarterly, annual or final return;

(c) Make deposits in the Electronic Credit Ledger;

(d) File a claim for refund;

(e) File an application for amendment/ cancellation of registration.

The following aspects need to be noted:

- A person desirous of being enrolled as a GST Practitioner should make an application in Form GST PCT-1 and satisfy the conditions required;
- The GST practitioner is required to affix his digital signature on the statements prepared by him/ electronically verify using his credentials;
- The responsibility of correctness of details furnished will lie on the registered person only.

(56) "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters;

The definition of India extends not only to the landmass, but also to the territorial waters and the air space above the Indian territory and territorial waters. Hence, all the supplies made in such areas will be treated as supplies made in India. Unlike earlier laws, GST redraws the map of India as commonly understood to a map that extends beyond the land mass well into

the sea all the way to the end of the maritime zone (200 nautical miles from baseline on the share at high-tide) going down under the sea bed and sub soil under such waters and up in the air up to the air space (sovereign air space) above.

Therefore, 'India' is not a two-dimensional space but a three-dimensional space extending to the territorial waters and beyond, going down below to the sea bed and extend above to the airspace above the horizontal expanse. But, 'India' excludes all areas that are 'excluded' such as special economic zone (see section 53A of SEZ Act) and Customs Areas (see section 2(11) of Customs Act) including bonded warehouses (see sections 57, 58 and 58A of Customs Act). Refer detailed discussion under IGST Act.

Sovereign air space is based on the jurisdiction of a nation's laws and there are 11 nations that have such laws. India is in the process of putting together its own air space legislation. Beyond the maritime zone or above sovereign air space is called 'high seas' in maritime law. Hence, we need to adjust our view of 'India' from what we see in a two-dimensional map to a three-dimensional area spreading beyond the land into the sea and the sub-soil and extending to the air-space above. And yet, this idea of India will exclude all those areas that are demarcated as 'lying beyond the customs boundaries' such as SEZ areas, Customs Area, Bonded areas, etc, which are not included here. GST treatment must then be applied keeping this new and adjusted view of 'India'.

(57) "Integrated Goods and Services Tax Act" means the Integrated Goods and Services Tax Act, 2017;

It refers to the Act which provides for principles to determine what is an inter-State or intra-State supply, and levy of tax on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

(58) "integrated tax" means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act;

Tax levied under the IGST Act is referred to as "Integrated tax". It refers to the tax charged under the IGST Act on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 40% and will be notified by the Central Government based on the recommendation of the Council.

It may be noted that 'integrated tax' is not the same as 'integrated goods and services tax'. Former is tax levied under IGST Act and later is tax that is levied under Customs Tariff Act. Refer detailed discussion about the 'two' kinds of IGST in the context of section 5 of IGST Act.

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

The term "input" is NOT to be equated with the 'goods' on a plain and simple observation. The contrast can be explained that 'input' are 'goods supplied as goods' and not 'goods (treated to be) supplied as services'. Goods supplied as services will be 'input services' (discussed later). Input, therefore, refers to goods (defined to include actionable claims, growing crops, grass

and things attached but agreed to be severed) and excludes capital goods (goods received that are capitalized by recipient). Unlike definition of the "capital goods" in the erstwhile laws such as Central Excise, VAT, etc., it is given a very simple meaning in the GST law.

It is sufficient for any goods which are used or intended for use in the course or furtherance of business to be capitalised in the books of account, to be treated as capital goods under GST. Accordingly, if a person who is engaged in the sale of laptops capitalises one laptop in the books of account, and such laptop used for business, it will be treated as capital goods under GST law as well. As to 'how' capitalization be done is left to the prudence of accounting and the standards of ICAI on accounting for 'property, plant and equipment'.

The second condition for goods to be treated as inputs, is that they must be used or intended to be used by the person who has received those goods '*in the course or furtherance of business*'. This phrase encompasses a wide range of functions within the business.

- The term "business" as defined under the GST law includes any activity or transaction which may be connected, or incidental or ancillary to the trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity.
- There is neither a requirement of continuity nor frequency of such activities or transactions for them to be regarded as 'business'.
- The law poses no restriction that the goods must be used on the shop floor, or that they must be supplied as such/ as part of other goods/ services. It would be sufficient if the goods are used in the course of business, of for furthering the business.
- The term 'course of business' is one that can be stretched beyond the boundaries consolidating activities that have direct nexus to outward supply. What is usually done in the ordinary routine of a business by its management is said to be done in the "course of business". Moreover, the term "ordinary" is missing before "course" in the phrase.
- From the above, it can be inferred that the purchase/ inward supply of goods need not be a regular activity, and may even be a one-time procurement. This is further clarified with the other phrase "furtherance of business", which has not been of use in the indirect taxes thus far.
- "Furtherance of business" is a new term, and an entirely new concept, that has been introduced in GST. Reference may be had to the detailed discussion about 'commencement of business' in the context of section 2(17) and again in section 16(1) to contrast with 'commencement of business'.

Additionally, there is no other condition attached to the term "input", especially in relation to the outward supply. Consequently, a person engaged in supplying services would also be entitled to treat the goods accepted inward as "inputs", where the conditions of not being capital goods, and the usage in the course or furtherance of business are satisfied. Thus,

stationery items procured by a supplier of pure services which are meant for use of the employees for business, will be eligible to be treated as "inputs" for such a person, and consequently, the taxes paid on such goods will be available as credit to the service provider, on meeting other conditions mandated for claiming credit.

Further, the law provides a flexibility for this purpose by inserting the words "or intended to be used" before "in the course….". By this, the law secures the meaning of the term "input" even for cases where goods have been purchased but, are yet to be used in the business. Thus, the conditions of *ready-to-use* and *put-to-use* would not be relevant for considering goods as "inputs", unless the condition takes route through rules/ other sections. However, no such conditions appear even for claiming input tax credit.

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

Any service that is used or intended to be used by a supplier of goods or services, or both, in the course or furtherance of business would be treated as "input service".

The meaning of the term "service" under the GST law is very vast to include everything that is not goods, barring securities, and monies that do not amount to activity relating to the use of money or conversion of money. Therefore, anything received by a person who is a supplier, which is not goods, and is neither securities nor money as such, would be treated as 'input service', so long as it is used or meant to be used in the course or furtherance of business.

Unlike the erstwhile law, there is no requirement for it to have direct nexus with the outward supply. In other words, the service received may not be directly linked to the outward supply of the supplier receiving the service, and the outward supply may be goods or services. Regardless of the outward supply, the service received would qualify as "input service" to him, when the same is used in the course or furtherance of business. Therefore, a retailer who receives housekeeping services of the business premised will be eligible to treat the services as 'input services' given that such services are received in due course of business.

Further, while the erstwhile law required that the services must be received only up to the place of removal for them to qualify as "input services", there is no such condition attached to the term under GST, where such services are received in the course or furtherance of business. This means that goods transportation services availed by the supplier, would qualify as input services to him, even if the transportation is up to the place of delivery to the recipient, say the factory of the recipient, although the transportation does not add value to the goods itself, but adds value to the supply made by him.

Contrasting with the definition of capital goods (capitalized in books) and inputs (not capitalized in books or revenue expense), input service does not appear to be restricted to revenue expenditure only but may also be capitalized in books and still be 'input services'.

(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

The concept of input service distributor existed even in the earlier service tax law. This has been borrowed into GST, entitling a person who is registered as an Input Service Distributor (ISD) to distribute the credit in respect of input services (and not inputs) received in its name. Given that services are intangible, it is not practicable to trace every service to the ultimate recipient of the service, as is distinguishable in case of goods, justifying the need for a distributor to services.

Please note that this definition does not refer to 'office of taxable person', it refers to 'office of the supplier'. This indicates that a supplier which is considered taxable person for purposes of section 9(1) obtains registration, then that supplier will remain a registered person and not an ISD. If a person is a registered person, then in respect of every office location of that person (in that State), he will remain registered person. To obtain ISD registration, the person must have an 'office' that is NOT a registered location from where taxable supplies are effected. Care must be taken not to have overlapping registration as both taxable person and ISD. This deliberate use of words 'office of supplier' indicates that there is no 'taxable supply' from that office.

The definition appears to indicate that the ISD-office cannot simultaneously be a place of business from where taxable supplies are made. In other words, if there is a place of business of a taxable person, that office cannot also be an office that 'receives tax invoices and issues document to distribute credit'. Although some experts do not find any apparent objection for co-existence of place of business and ISD, in view of the inter-branch supply of management and supervisory services by an office that has such capabilities, treating such an office as ISD would be misapplication of the facility of ISD to distribute credit.

Generally, the head office of the person, or the corporate office, by whatever name called, would be the location to which the services would be billed. However, there is no implication by law that an ISD must be the head office. It may be ensured that the office registered as ISD does not itself undertake any activity in the nature of outward supply, not receive inward supplies of its own or not attract RCM liability. Therefore, a single company may choose to have multiple regional offices based on its business requirements.

To distribute the credit of input services, the ISD would be required to follow the manner prescribed by the rules, including:

- Issue of an ISD invoice to each recipient of credit on every distribution.
- Recipients of credit are those taxable persons to whom it is attributable (whether or not they are registered), being persons having the same PAN (as issued under the Income Tax Law) as that of the ISD.

- The credit of integrated tax should be distributed as integrated tax irrespective of the location of the ISD, and so also:
  - Where the ISD is located in a State other than that of the recipient of credit, the aggregate of Central tax, State tax and Union territory tax, as integrated tax.
  - Where the ISD is located in the same State as that of the recipient, the Central tax and State tax (or Union territory tax) should be distributed as the Central tax and State tax (or Union territory tax), respectively.
- Each type of tax must be distributed through a separate ISD invoice. However, there is no requirement to issue ISD invoices at an invoice-level (received from the supplier of the service).

  Note: The liability to cross charge for services provided between distinct persons (branches/ HO etc.) is independent from the function of the ISD.

Care must be taken not to substitute 'fixed establishment' with 'ISD'. If a location is a fixed establishment, then that location is liable to be registered as a 'place of business' and not as ISD. When there is 'sufficient degree of human and technical resources', it is inexcusable to register such location as ISD and seek to distribute credit. Reference may be had to the discussion under section 19 about FAQs issued for BFSI sector where HO of banks (even if registered as ISD under earlier laws) are stated to be a 'taxable person' for supplying 'management and oversight services' to various other distinct persons (branches) and liable to regular registration.

The Finance Bill, 2024 as introduced in Lok Sabha on 01.02.2024 has substituted the definition of Input service distributor as follows:

"An office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20."

(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

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

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

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

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

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

but does not include the tax paid under the composition levy;

From the opening of the definition, it can be understood that input tax can arise only in respect of registered persons, and the tax is only available on supplies ***made to him***. Therefore, no tax paid on outward supplies can ever qualify as input tax to the person making the supply (who may or may not be registered) and shall only be treated as 'input tax' by the person receiving the supplies.

The law also makes it amply clear that input tax is linked to a specific registration and cannot be loosely associated with various GST registrations of the single legal person.

Further, for 'input tax', the law makes no distinction between Central tax, State tax, Union territory tax and integrated tax. Integrated tax is tax charged under IGST Act but integrated tax on goods and services on import of goods is charged under section 3(7) of Customs Tariff Act. This difference should not be missed while reading the law. IGST paid on import of goods is in the nature of customs duty and not GST. But still, credit is admissible on such Customs duty (paid as IGST on import of goods). Similarly, cess paid on import of goods is not a cess under Cess Act but under section 3(9) of Customs Tariff Act. Refer again to the discussion under section 5 of IGST Act of 'two' types of IGST that can be seen in clause (a) of this definition to be specifically included after the body of this definition covers 'integrated tax'.

The law specifically provides certain inclusions and an exclusion to clarify the scope of the term:

- The specific inclusions are of two types, i.e., the integrated tax applicable on import of goods (in lieu of the previously applicable CVD and SAD), and the taxes payable on reverse charge basis on account of supplies being those supplies that are notified in this regard, or on account of being inward supplies from unregistered persons. From the language used, it must be understood that these inclusions are not limited to those that have been discharged, on the premise that the law used the words "charged" or "taxable" and not "paid".
- While it is clear that composition suppliers will not be entitled to collect taxes, from this definition, it can be inferred that the amounts paid by composition in lieu of tax, cannot, in turn, be treated as input tax either for the composition supplier or for the recipient of the supplies.

Further, the GST Compensation law reserves right to levy cess on certain supplies. However, this cannot be treated as input tax for the purposes of GST. Although the GST Compensation law provides that the provisions of input tax would apply *mutatis mutandis* to cess, it categorically specifies that the input credit of cess can only be utilised for discharging the liability on such cess.

Input tax credit includes tax paid on reverse charge basis. Once tax is paid under section 9(3) of CGST Act (or 5(3) of IGST Act), character of the payment remains GST and by operation of law, be treated as 'input tax'.

(63) "input tax credit" means the credit of input tax;

For a tax to qualify as "input tax credit", it must first be "input tax". The law creates a separate terminology for this purpose as all input tax would not qualify as credit. Credit of input tax would be available subject to specific conditions and restrictions, and to persons being registered persons.

In view of the exhaustive listing of input taxes in section 2(62), transition credit is clearly NOT input tax credit. And treatment applicable to 'input tax credit', whether refund on zero-rated supplies or imposition of interest when found to be inadmissible, do not apply to 'transition credit'. Utilization of balance in Electronic Credit Ledger (by crediting transition credits into the ledger) still does not render transition credit to be input tax credit.

(*64) "intra-State supply of goods" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;*

The principles for determining a supply as an intra-State supply are provided in the IGST law in terms of the exclusive power of Parliament under Article 269A(5) of our Constitution. Drawing reference to the relevant section, every supply of goods, where the location of the supplier of the goods and the place of supply as determined under section 10 of the IGST Act, are in the same State (or same Union Territory), would be an intra-State supply of such goods. Accordingly, an import or export of goods can never be an intra-State supply.

Every taxable supply that is an intra-State supply shall be liable to both Central tax and the respective State tax (or Union territory tax), unless otherwise exempted.

The 'place of supply' referred to in this regard is a legal terminology and should not be understood for its usage in English language. Section 10 of the IGST Act provides situation-specific conditions for determining the 'place of supply'. Refer detailed discussion under section 10 of IGST Act to determine whether 'place of supply' is a question of fact or question of law.

(65) "intra-State supply of services" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

Determination of 'place of supply' is based on applicability of the criteria laid down in section 10, in case of supply of goods, and section 12 in cases of supply of services, intra-State supplies is very specific in section 8 of IGST Act. All supplies that are NOT intra-State supplies will fall within the scope of inter-State supplies i.e., supplies to SEZ located in the same State as the local supplier or supplies whose place of supply is in the territorial waters, etc. Care must be taken to identify intra-State supplies based on (i) location of supplier and (ii) place of supply.

Now, 'place of supply' is a question of law as dictated in section 10 or 12 of IGST Act, as the case may be. Whereas 'location of supplier' is a question of fact. In case of supply of services, 'location of supplier of services' is defined in section 2(71) but 'location of supplier of goods' is NOT defined. Experts advise that this is NOT a legislative error of omission but a deliberate

and thoughtful silence since 'location of supplier of goods' will be the 'location of goods' themselves. Definition of 'place of business' in section 2(85) brings this out that *",,,,place where taxable person stores his goods….."*.

As in case of goods, where the location of the supplier of the service and the place of supply as determined under section 12 of the IGST Act, are NOT in the same State (or same Union Territory), the supply would be an inter-State supply of such services. Import of goods under a cross-border lease arrangement attracts levy of customs duty (for the physical article brought into India) and also attracts levy of GST (for the treatment of lease as a supply of service under paragraph 1(b) or 5(f) of schedule II). When IGST is being paid on the lease rentals as 'import of services' (availing the corresponding exemption for IGST on imports), care must be taken NOT to assume all overseas payments of lease rentals to be inter-State supplies. For example, Leasing Company in Mumbai financing aircraft engine on lease from UK to an Indian Airline Company, which is also in Mumbai, will be an intra-State supply for payment of tax on lease rentals.

(66) "invoice" or "tax invoice" means the tax invoice referred to in section 31;

On a plain reading of the law, it appears that the terms "invoice" and "tax invoice" have been used inter-changeably to refer to that document that is prescribed by law, as a document that shall be issued by the registered person on making taxable supplies. The tax invoice should contain all the prescribed details such as the description of the goods, quantity, value and tax charged on the supply. The possibility of denial of credit due to prescribed details not being available even if not important is real unless law provided for condonation which was there in earlier laws.

- In respect of goods: A tax invoice can be issued at or before the time of removal of the goods for making the supply, where the supply involves movement of the goods (either by the supplier or by the recipient, or any other person).
    - However, where the supply to the recipient does not involve movement of the goods, the tax invoice would be due at the time of delivery or making the goods available to the recipient. It is not necessary that every supply requires movement of goods on the basis that all goods are movable in nature.
    - The time of removal would matter only in cases where the removal of goods and the movement of goods is by virtue of the supply.
    - Consider the case of sale on approval basis. Goods would be removed at a certain time, and may be delivered to the location of the recipient. However, it is not known at the time of removal, whether the transaction results in a supply. Therefore, the time of confirmation by the recipient that he wishes to retain the goods would be the due date for issuing the tax invoice.
    - The Government is also empowered to notify certain categories of supplies in respect of which it can prescribe a separate time limit for issuance of tax invoice.
- In respect of services: A tax invoice for supplying services should be issued within 30 days from the date of supply of the taxable service.

- However, the Government is empowered to notify certain categories of services wherein any other document relatable to the supply would be treated as the tax invoice, or for which no tax invoice is required to be issued at all.

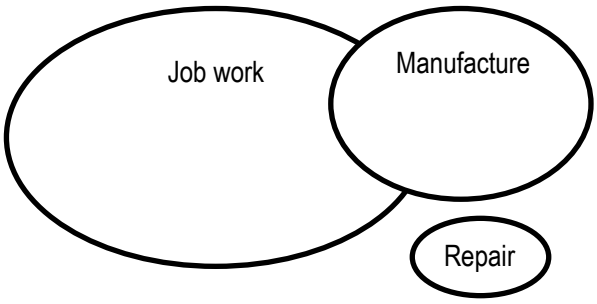
The provisions of section 31 of the CGST Act also provides for invoices or other documents such as bill of supply, payment voucher, receipt voucher, etc. for specific situations.

(67) "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

Inward supplies may be of goods or of services, or of both. The key in this definition is to note that 'inward supply' is to be understood as the way supply will be looked at in the hands of the 'recipient' who represents 'receipt' of goods or services in any of the forms of supply stated here. Please note that reference to 'furtherance of business' is missing in this definition and is in harmony with the fact that import of service is included in definition of supply even without being in furtherance of business.

It may be questioned as to whether an inward supply is not particular to a registration, or whether an inward supply can be associated with any of the registered persons having the same PAN, on the premise that it is in relation to "a person". However, that would not be the intent of the law; it is to enable correlation with a person, whether or not he is a taxable person. In other words, reference to inward supply may be in relation to any person, whether he is registered, or unregistered taxable person, or person not liable to tax. Some drafting hygiene seems to be needed in this definition.

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



To start with, the expression "job work" refers to a "treatment" or "process", which is undertaken by one person, who may or may not be registered, to another registered person. Key aspect to consider is job-work is the super-set of this 'treatment or process' which may or may not amount to manufacture. When the Principal for whom the 'treatment or process' is carried out is a 'registered person', only then would it be 'job work'. But even to an unregistered principal, treatment or process may be carried out and that may still amount to manufacture. Now, 'repair' seems to be a 'treatment or process' but will NOT be 'job work'. Principal component must be provided in order for the remainder of the components including conversion to amount to 'job work'. If nothing is provided except instructions to produce, it does not amount of job work.

While treatment and processing are commonly understood as services, there is no implication that job work is purely services, or that goods would not be used for such treatment or

processing. However, schedule II of the CGST Act which specifies activities to be treated as supply of goods or supply of services, *inter alia* provides that any treatment or process which is applied to another person's goods is a supply of services. Such a deeming fiction in respect of job work is given effect to, based on the primary objective of any job work, which is to provide a service.

The following aspects need to be noted:

- Capital goods may be sent for job work, or for the purpose of carrying out the treatment or process.
- A job worker is free to effect inward supplies on his own account for carrying out the job work. The law does not require that goods applied for the treatment or process must also be sent by the registered person on whose goods the job work is undertaken.
- As regards the job worker *per se*, the law makes no demands that such person must be a registered person.
- The law requires that the treatment or process undertaken by the job worker must be on goods belonging to another "registered" person.
    - From the usage of the term "another" before "registered person", it is clear that the law permits job work supplies for other legal persons or other distinct persons (sharing PAN with job worker).
    - Job work carried out by one distinct person for another distinct person (Principal) is permitted.
    - But if both share a common GSTIN, it is not a supply at all.
    - The reference to the principal is made by using "another registered person" and not "another person".
    - It may safely be understood that, if one unit of a company supplies goods for further processing to another unit of the same company, having a different registration from that of the supplying unit, the unit undertaking the processing activity can be treated as a job worker.
- If the Principal is an unregistered person, then the job worker is not a job worker. Classification of the work undertaken may need to be examined whether it is manufacture or not to attract the appropriate rate of tax applicable to the goods so manufactured and not rate of tax applicable to services of job-work;
- Job work should not be interchanged with repair activity as both appear to involve 'treatment or process' on goods belonging to another. Job work brings into existence a functionality that was not in existence whereas repair restores functionality that was already in existence before the article became faulty (and needed repairs).

- It is important to note that the job worker is not an Agent of the Principal and the relationship inter se is that of Principal to Principal.
- Job work need not result in the emergence of a distinct new article. Manufacture is a sub-set of job work which is very wide covering 'treatment of process'.
- Also, important to note is that reference to 'another registered person' is missing in paragraph 3 of schedule II where treatment or process on goods belonging to 'another person' is treated as a supply of services.

(69) "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 Government 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;

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

(f) a Development Board constituted under article 371 and [10][article 371J] of the Constitution; or

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

A 'local authority' is also a 'person' for the GST law. A local authority would enjoy the same treatment as is received by a 'Government' such as in the case of supplies that shall be treated as neither a supply of goods nor a supply of services, requirement to deduct tax at source on supplies made to it, etc. Reference may be had to principles laid down in *Ajay Hasia vs. Khalid Mujib Sehravardi & Ors 1981 AIR 487* in the context of Article 12 of our Constitution where the following ingredients were laid down while determining if any authority was 'a State' (also see discussion under section 2(53)):

Entire share capital is held by the Government or it's agencies or nominees	Financial assistance is accessible from the Government	Monopoly status is afforded to the authority in the area of activity or domain
Deep and pervasive State control exists over the functioning of the Authority	Functioning of the authority is determined or subject to approval or override of State	Functions of any department of Govt. is now vested in the authority

[10] *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.*

Additional considerations not laid down in SC decision:	
Employees of the authorities are servants of the President of India / Governor of State and their salary and emoluments are a charge against the consolidated fund of India / State	*In the event of liquation of the authority, the entire 'liquidation estate' (discharge all liabilities) vests with the State and flows into the consolidated fund of India / State*

Understanding Govt., Govt. Agency, Govt. Entity & Local Authority assumes significance considering TDS obligations under section 51(on payments by such entities) & RCM obligations (on recipient of services from such entities). Some considerations may be to examine schedule XI & XII of our Constitution about functions of sovereign. All functions 'by' sovereign are not functions 'of' the sovereign. Refer discussion under section 2(53) about 'Government'.

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

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

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

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

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

Given that services need not be tangible, the determination of the location of the recipient of service could result in complications. For this reason, there is a statutory definition of 'location of the recipient of services' which is essential to determine whether the supply is an inter-State or an intra-State supply, as such location is the residuary clause for determining the place of supply of services.

Broadly, the meaning given to the phrase "location of the recipient of services" is oriented towards determining the place of supply of the services. The most relatable location of the recipient can be determined in the following order – if the place of supply of the service happens to be:

(a) a 'place of business' which is a registered place of business, such place;

(b) a 'place' which is a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources), such fixed establishment;

(c) at multiple 'places' which may include places of business or fixed establishments, that one place to which the supply is most directly attributable;

(d) a place that cannot be identified from the above three clause, the usual location of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

(71) "location of the supplier of services" means, —

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

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

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

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

The determination of the location of the supplier of services is equally complicated, as is in case of the recipient. The 'location of the supplier of services' is principally essential to determine whether the supply is an inter-State or an intra-State supply (i.e., where location of supplier and place of supply are in the same State or Union Territory, the supply would be an intra-State supply, and will be an inter-State supply in any other case).

Location of supplier 'of goods' is not defined in the CGST Act and does not seem to be a drafting oversight but a deliberate omission. Please refer to discussion in this regard in the context of section 7 and section 10 of IGST Act.

(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;

The meaning of the term "manufacture" came with a great deal of significance in the erstwhile indirect tax regime, given that chargeability of excise duty relies solely on whether an activity results in manufacture. However, in the GST regime, the taxable event is a "supply" and tax is leviable whether or not the supply followed 'manufacture' of goods. Hence, the term loses its significance in the GST regime. However, a definition has been provided as references to this term are inadvertently essential even in the GST law, listed below:

- Composition levy: The composition tax rate in case of manufacturers and other suppliers not being manufacturers is 1%, (being the aggregate of central and State tax/ Union Territory tax). Further, manufacturers of certain notified goods would not be eligible to exercise the option to avail the benefit of composition scheme. Such a restriction is however, not placed on other classes of persons, say traders of the same notified goods.
- Concept of deemed exports: One of the pre-conditions for any such supply to qualify as deemed export is that the goods in question must be manufactured in India. Therefore, even where the goods are of the nature that are notified by the Government as goods

that qualify as "deemed exports" on meeting certain conditions, if such goods are not manufactured in India (or, any processing performed on any imported goods does not result in manufacture), they cannot enjoy the benefit of the deeming fiction.

- Maintenance of accounts: A manufacturer shall be required to maintain a record of production/ manufacture of goods, in addition to recording the details of inward and outward supplies.

(73) "market value" shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;

This term finds reference only in the provisions in relation to confiscation of goods or conveyance arising on account of contravention of the provisions of the law (say supplies made by a taxable person who has failed to obtain registration, etc.). The law provides that the owner of the goods will be given an option to pay a fine, not exceeding the market value of the goods in question, to safeguard his goods or conveyance from being confiscated.

Goods or services of like kind and quality means *any other* goods or services ("comparables") made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services in question, is the same as, or closely or substantially resembles, that of the comparable.

The meaning of the term 'related', must be understood from the definition provided in respect of 'related persons' under section 15.

This definition should not be confused with Open Market Value as this definition appears to be restricted to cases where there is confiscation where the value is from the recipients perspective.

(74) "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 drinks 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;

When two (or more) goods, or two or more services (need not be taxable), or a combination of goods and services, that each have individual identity and can be supplied separately, are deliberately supplied for a single consolidated price, the supply would be treated as a mixed supply.

Most importantly, such a supply should not qualify as a composite supply, for it to be treated as a mixed supply, i.e., in case of a mixed supply:

- The two or more supplies are not naturally bundled and supplied conjointly in the ordinary course of business. In other words, unnaturally supplied inseparably and for a single price is a hallmark of mixed supply;

- The principal supply cannot be identified – more than one of the supplies form the "predominant element" of the supply. In other words, individually present but inseparably presented for supply would also yield tax being applied as mixed supply;

Where the conjoint supply is neither a composite supply, nor supplied for a single price, the two or more supplies would be treated as individual supplies or non-composite supply, and not as a 'mixed supply'.

Illustrations for consideration:

(a) Supply of toothpaste, brush, plastic container for the two: The three goods can be said to be naturally bundled and supplied in the ordinary course of business. While the plastic container is ancillary to the supply, both toothbrush and toothpaste could be the predominant elements of the supply. In a composite supply, there can be only one principal supply and therefore, this supply would be a mixed supply.

(b) Supply of laptop and printer: Although a printer is used for the purpose of printing, the commands for which can be given through the laptop, the two goods are not naturally bundled and supplied conjointly in the ordinary course of business. Therefore, this supply is a mixed supply.

(c) Supply of lectures in a coaching centre and monthly excursions such as trekking, etc.: The two services are not naturally bundled in the ordinary course of business. Therefore, this supply is a mixed supply as it is for a single price.

(d) Supply of car, modular kitchen or whitegoods by builder to some apartment buyers is a mixed supply.

The tax rates applicable in case of mixed supply would be the rate of tax attributable to that one supply (goods, or services) which suffers the highest rate of tax from amongst the supplies forming part of the mixed supply. Therefore, a mechanism for separating the supplies could be examined, in case of mixed supplies where tax rates are differing.

It is important to ensure that there is a single price assigned in respect of the various supplies that are involved. And the supplies so involved are unnaturally bundled together for such single price. If the price were not one single amount but the visible aggregation of individual prices then, even if supplied together, each of them may be regarded as an individual non-composite supply.

(75) "money" means the 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 recognised by the Reserve Bank of India when used as a 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;

The meaning attributed to this term in the GST law is a polished adoption of the definition provided under the Service Tax law. Additionally, money as defined in the GST law includes

any foreign currency as well. The significance of this term is that it is out of the scope of taxation under GST. Money would neither be goods nor services under the GST law. However, there is no exemption given to activities relating to the use of money or its conversion. So also, sale of money, say a coin collection set of 100 coins, would be chargeable to tax, as such coins are held for their numismatic value. Crypto-articles are not 'money' since they are not *"instrument recognized by RBI"*.

It is also interesting to note that this term is no longer relevant for understanding whether a transaction is for consideration, as the meaning assigned to the term 'consideration' under the GST law may be in money or in another form.

The words *"…or any other instrument recognised by the Reserve Bank of India…"* demands a mention of the Payments and Settlement Systems Act, 2007 which allows RBI to authorize the development and distribution of a system of settlement of payments in the form of prepaid instruments (PPIs) that are not Indian legal tender but are yet used as a consideration to settle an obligation because they are 'recognized' by RBI such as e-wallets. Such PPIs are often confused with voucher (defined in section 2(119) below). This form of interchangeable usage would be an error. Since the PPI is included in the definition of money it cannot also be included in the definition of voucher. PPIs are not vouchers but money. Tax treatment applicable on the receipt of money must be applied even when receipt is through PPI's.

(76) "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;

Section 2(28) of the Motor Vehicles Act, 1988 reads as under:

"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.

From this, it can be understood that all vehicles such as cars, trucks, buses, tempo-travellers, etc., that are meant for usage on roads will be covered within the meaning of 'motor vehicles'. The implication of this definition is that input tax credit is not available in respect of inward supply of motor vehicles, unless they are used for specific purposes (being transportation of goods, or for making taxable supplies of further supply of such vehicles or supplying passenger transportation services or for imparting training in relation to such vehicles). The denial of rent a cab (less than 12 persons) credit means that there is a need to examine the applicability of permits and its harmonious understanding with the Motor Vehicles Act.

When motor vehicle has been defined by reference to another Act, all interpretation that is allowed under that Act would equally apply under GST. Motor vehicles such as its excavators, wheel loaders, back hoe, road rollers, etc. will also come within the same restrictions

applicable to motor vehicles under GST law. Merely because these articles are used more in the nature of plant and machinery and less in the form of motor vehicles is of no avail. Refer detailed discussion under section 17(5) for 'what is and what is not' a motor vehicle.

(77) "non-resident taxable person" means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;

The meaning of the term 'non-resident taxable person' covers all person who undertake transactions involving supply of goods or services or both, whether or not such supplies are taxable, so long as such person neither has a fixed place of business nor residence in India.

Every such person who intends to affect any taxable supplies under the GST law, should compulsorily obtain registration under the GST law before commencing business, irrespective of the turnover during the year. The application for registration shall be made at least 5 days prior to the commencement of business.

However, a person who does not undertake transactions involving any supplies "occasionally", he would not be treated as a non-resident taxable person. The law does not define the frequency implied by the expression "occasionally". Therefore, where there is a reasonable frequency of occurrence of supplies in India, it must be construed as transactions occurring occasionally.

Due to applicability of higher rate of withholding under the Income-tax Act on remittances made from India, non-residents who have no active business presence in India are also found to have secured PAN numbers and for this purpose, has designated a representative with an address being either admitted premises of operations or simply for correspondence. Care must be taken to determine whether such designated representative and address would 'fixed place of business' (and not to be equated with fixed establishment).

(78) "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

A transaction must be a 'supply' as defined under the GST law, to qualify as a non-taxable supply under the GST law.

The following aspects need to be noted:

- Stock transfers to unit within the State for which no separate registration is obtained, which does not qualify as a 'supply' as defined under section 7 of the CGST Act, cannot be said to be a non-taxable supply.
- Receipts that satisfy exclusion from valuation as 'pure agent' (rule 33) would also be no supply and not to be treated as non-taxable supply. GSTR 9 calls such amounts received as 'no supply' (which is an expression that is not found in the law).
- Supplies that enjoy the benefit of being wholly exempted from taxes, nil-rated supplies and zero-rated supplies are also not covered under the umbrella of 'non-taxable supplies' given that the goods or services are in fact liable to tax, and such tax is

exempted by virtue of an exemption notification, or the tax rate is nil (refer discussion under 2(47) for some interesting examples of 'nil' rates supplies).

- Only those supplies that are excluded from the scope of taxation under GST are covered by this definition – i.e., alcoholic liquor for human consumption, articles listed in section 9(2) or in schedule III.
- But, please note that supplies listed in schedule III will NOT be included as non-taxable supplies (or exempt supplies) as they are, by express legislation, declared to be 'treated' neither as a supply of goods nor a supply of services. However, for the limited purposes of section 17(2), by a fiction, certain transactions appearing in schedule III are 'treated' as exempt supplies which will be so only to that limited extent.
- Another instance of 'merchanting trade' and 'in-bond' sales. Merchant Trade transactions are those transactions where the trader in one country A, purchases goods from country B and supply the goods to a second buyer in country C, directly, without goods entering country A. Since, goods never cross the Customs frontier of the country of trader. In case country A is India then, GST law cannot apply when supply takes place 'outside taxable territory' even though said person (trader) is located in India. GST is tax on supply and not on supplier. It will form part of revenue (turnover) of person (legal entity) but as a 'no supply' transaction. Experts have indicated that since it is not 'exempt supply', such transactions will NOT attract credit reversal. To this end, explanation inserted to section 17(3) vide CGST (Amendment) Act, 2018 may be referred. Similarly, in-bond sales are actually made not only by the person (legal entity) but also by one or the other distinct person (belonging to same person). In such cases, turnover will be includible in the returns of such distinct person (although there is no space for such transactions in GSTR 3B) who has initiated these transactions. It is not advisable to exclude these totally from reporting (at least in GSTR 9 until suitable tables are available for monthly reporting) and these are not to appear for the first time as a reconciliation item in GSTR 9C.
- An interesting recent development is the levy of GST in respect of 'holding of securities' services under HSN 997171 on Parent Companies on forward charge basis or Subsidiary Companies on reverse charge basis in terms of section 7(1)(c) read with paragraph 4, schedule I. It is important to note that existence of entry in tariff classification does not imply existence of levy. Only when levy is demonstrated, will tariff classification be required to compute the tax. While WTOs UCP Guidelines have been adopted to arrive at HSN 997171, exclusion of 'securities' from definition of 'goods' as well as 'services' cannot be ignored. HSN 997171 will come in handy when securities are brought within the scope of levy.

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

A taxable territory means the territory to which the provision of the GST law applies. Accordingly, in case of CGST law, the taxable territory would cover all locations covered under the extent of the law – i.e., whole of India.

- Accordingly, locations outside India would be considered as non-taxable territory, being the territory outside the taxable territory.
- Similarly, for the State GST law, non-taxable territory would cover all those locations where the provisions of the particular State GST law would not apply. For instance, for the purpose of the State GST law of Maharashtra, all other States and Union Territories of India, and locations outside India, would be non-taxable territory.

In this regard, it would be relevant to understand the geographical extent covered within the meaning of the term 'India' – *refer analysis of Section 2(56)*.

Supply taking place in a 'non-taxable territory' would be outside the jurisdiction for imposing any GST. High sea sales (first supply) are not liable to GST because goods that involve movement are located outside the taxable territory even though the recipient may be inside. Another example is Merchandising Trade (eg., Buy from Singapore and Ship to Germany, directly by an Indian entity). GST is a tax on supply and not a tax on supplier. Supply that does not occur within taxable territory would be a non-taxable supply in the returns of this Indian entity.

(80) "notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

The Central Government and the State Governments are empowered to issue notifications to give effect to certain provisions such as goods and services that would be liable to tax on reverse charge basis, supplies that are exempted from tax, supply of goods that shall be treated as supply of services, etc. For a notification to be valid under GST, it must be published in the Official Gazette of India, as published by the Government of India's Department of Publication, Ministry of Urban Development.

Every notification published in the Official Gazette will come into force from the date of such publication, unless another date is specified for this purpose, in the notification.

[11](80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming;

[12](80B) "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;

[11] Inserted vide The CGST (Amendment) Act, 2023 dated 18.08.2023 through Notf No. 48/2023-CT dt. 29.09.2023. Applicable w.e.f. 01.10.2023.

[12] Inserted vide The CGST (Amendment) Act, 2023 dated 18.08.2023 through Notf No. 48/2023-CT dt. 29.09.2023. Applicable w.e.f. 01.10.2023.

Hon'ble Supreme Court in the case of *Directorate General of Goods and Services Tax Intelligence (HQRS.) vs. Gameskraft Technologies Pvt. Ltd. [2023 (77) G.S.T.L. 3 (S.C.) [06-09-2023]* granted ad interim stay on Hon'ble High Court ruling that online/ offline/ physical/electronic/ digital rummy games and also other games, played with or without stakes on assessee' s Mobile App being substantially and preponderantly games of skill and not of chance, are not covered within expression 'betting and gambling' appearing in entry 6 of schedule III to CGST Act, 2017 and, hence, same are not taxable. In order to bring into force, the taxability of online gaming and to reverse the judgement of Hon'ble Supreme Court, the 50th GST Council meeting held on 11th July 2023 made recommendations on the imposition of GST on online gaming, as well as putting an end to the debate over "games of skill or chance." In light of the above, various definitions have been inserted in the CGST Act.

Online gaming includes online money gaming. Further the online money gaming will include games based on skill, chance or both.

(81) "other territory" includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114);

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the three Union Territories with Legislature being Delhi, Jammu & Kashmir and Puducherry), and excludes the Union Territories (i.e., the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, and Chandigarh).

All territories that fall into the ambit of 'other territory' as defined above would also form part of the meaning of the term 'Union territory' as defined under section 2(114), to leave no territory that is claimed by any of the States or Union Territories, outside the scope of taxation under GST, so long as such territory is in India. Although there is no specific explanation that the extent of the term should be limited to the territory of India, we should not consider locations outside India to also fall into the scope of 'other territory' defined above, as it would defeat the purpose of law.

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

The output tax chargeable on intra-State taxable supply of goods or services can be summarised as under:

Type of Supply	Output tax	Reference
Supplies within a State (or UT with Legislature)	CGST + Specific SGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act
Supplies within a UT without Legislature	CGST + UTGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act

The following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.
- Some experts are of the view that taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making inward supplies from unregistered persons, would also be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax. Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.
- 'Tax under this Act' referred in section 32 clearly refers to output tax, based on this definition. Accordingly, any person collecting output tax will be liable to deposit it with the Government under section 76. Collecting output tax (or tax under this Act) higher than the prescribed, such person will be liable to deposit the entire amount collected with the Government. However, in case outward supplies are exempted (goods or services are themselves exempted or recipient is allowed some exemption), supplier is free to collect 'input tax credit reversed' on account of this exemption on the outward supply. Such amounts collected NOT being in the nature of 'tax under this Act' or 'output tax', will not be affected by the bar in section 32 or their obligation imposed by section 76. Tribunal has examined a similar question in the context of section 11D of Central Excise Act and the Larger Bench has held that collecting 'input tax credit reversed' is not prohibited in law in *Unison Metals Ltd. v. CCE-Ahd-I (2006) 204 ELT 323 (LB-Tri.)*. There is no direct decision on this aspect under GST as it has only been four years since its introduction.

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

For any transaction or activity to qualify as an outward supply, it must first be a 'supply' in terms of the GST law, unlike inward supplies, which could merely be receipts, not amounting to supply. Further, an outward supply is closely associated with a 'taxable person' being, a unit of a person that has, or is required to have, a separate registration.

The phrase 'outward supply' can be applied to a supply only when such supply is made in the course or furtherance of business. Say, for instance, business assets are put to personal use. In such a case, even if the transaction is deemed to be a supply (made without consideration), it cannot be treated as an 'outward supply', since the application of the business asset for personal use was neither in the course nor furtherance of business.

The following aspects need to be noted:

- Supplies not qualifying as outward supplies would also be included for the purpose of computing the 'aggregate turnover';
- In case of a composition supplier, where he engages with a recipient outside the State, and if the transaction does not result in an 'outward supply', (say, sending goods for job work outside the State), the conditions imposed on him as a composition supplier would not be violated (i.e., making inter-State outward supplies);
- Details of supplies on which tax is payable, but which do not amount to 'outward supplies' would also have to be declared in the return for outward supplies (GSTR-1);
- By treating goods or services "agreed" to be supplied as 'outward supply', the law authorises imposition of GST on advance payments;
- Reimbursement against goods or services purchased by employees of a taxable person would not be in furtherance of business of such employees to attract any tax.

(84) "person" includes—

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

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

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

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

(m) trust; and

(n) every artificial juridical person, not falling within any of the above;

This definition is to be read along with the fiction in section 2(107) where a 'taxable person' is understood to be sub-units of a person such that transactions between two taxable persons is also a taxable supply. Every 'person' is understood to have a separate identity, under the GST law.

For instance, a trust set up by a company will be treated as a separate person from the company, or a limited liability partnership holding all the shares of a company will be treated as a separate person from the company.

It is common to see entities who contribute assets and have a basket of different interests which are in the nature of partnerships. The sharing of risks could indicate such associates or joint venture. On the other hand, one sided contract of revenue sharing maybe considered different. Please note that it has been held in the case of *CIT v. RM Chidambaram Pillai (1977) 106 ITR 292 (SC)* that 'firm' is a collective noun of the partners and not a legal person. Therefore, a contract with a firm is legally, multiple-simultaneous-identical contracts with each partner. Again, in *CIT, Bihar v. Ramniklal Kothari (1969) 74 ITR 57 (SC)*, it has been held that business of the firm is the business of the partner. Therefore, from GST perspective, there is no supply between the partners and their firm or *vice versa* and the flow of remuneration (in all the various forms that is permitted by Income-tax law) would not be taxable in the absence of any supply *inter se*, as long as the Partners act in their capacity as such in their transactions with the Firm

(85) "place of business" includes—

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

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

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

The inclusive nature of the definition indicates that the places or locations listed in the definition are illustrative and not exhaustive. From the three clauses of such illustrative locations, each clause makes a reference to 'taxable person'. Therefore, place of business should be understood as a term that is specific to each taxable person, having (or requiring) distinct registrations. Say, in the case of a company having operations across 10 cities in two States, the set of cities being the places of business for one State would be mutually exclusive from that of the other.

Place of business therefore is not only any place where business is ordinarily carried on but it would also be a place where goods are located and kept ready for supply. Ex-works supplies, to a registered person from another State, without the goods immediately being transported out to that State, would also come within the definition of place of business. Therefore, there is no need to be concerned that location of supplier of goods is not defined in the law because unlike services, there is sufficient trail available in transactions involving supply of goods.

Below are other implications in relation to place of business:

- Registration of such places as additional place of business – although there is no explicit requirement under law to declare all places of business as additional places of business. This would facilitate transportation of goods between places of business, or from the job worker's premises to any of the places of business, which can be supported with the delivery challan, the details of which would form part of e-way bill;
- Maintenance of separate accounts in relation to each place of business such as details of production or manufacture of goods, inward and outward supply, stock records of goods, input tax credit availed, output tax payable and paid;
- Departmental audit can be carried out in respect of registered persons at any of its places of business; this apart, authorised officers can demand access to any such places to inspect books, documents, computers, etc.;
- Place of Business (POB) is not the same as Place of Supply (POS) and registration is required at the POB and not at POS. Eg., Renting service is business which is 'ordinarily carried out' from the POB of the landlord and not from the POS where the property is situated. Installation activity is carried out at the project site which is not POB of the supplier and the site may or may not be its POS. Construction activity carried out at the site could be the LOS (location of supplier of service) because it satisfies the definition of FE (fixed establishment) but both these would not be POB of the contractor.

(86) "place of supply" means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;

Chapter V of the IGST Act provides for determination of the 'place of supply' in respect of any supply of goods or supply of services. This expression has the utmost significance in determining the nature of tax payable on a supply. Simply put, a supply shall be intra-State (liable to CGST, SGST/UTGST) where the location of the supplier and place of supply as determined under the said Chapter are in the same State (or Union Territory), and neither the supplier nor the recipient are SEZ units/ developers. In any other case, the supply would be treated as an inter-State supply, liable to IGST.

While it is commonly stated that GST is 'a destination-based consumption tax', barring this declaration of 'destination' there is nothing in the GST law to affirm this (so called) principle of

GST. And on a careful study of the 'place of supply' provisions, there is no confirmation of the existence of this principle in the enacted statutory provisions.

Place of supply is therefore the destination of supply attracting tax under this law. Place of supply is not left out as a question of fact that each supplier has to determine but is a question of law that is left to only be discovered by an application of the law. Refer earlier discussion on the exclusive power of Parliament to determine the destination of consumption in terms of Article 269A(5).

Chapter V deals with determination of 'place of supply' under the following brackets:

(a) Goods, other than supply of goods imported into, or exported from India.

(b) Goods imported into or exported from India.

(c) Services where location of supplier and recipient is in India.

(d) Services where location of supplier or location of recipient is outside India.

(e) Online information and database access or retrieval services (OIDAR) provided by a person located in a non-taxable territory to a non-taxable online recipient (i.e., Government, governmental or local authorities, individuals, other persons receiving such services for purpose other than commerce, industry, business, profession, but located in taxable territory).

(87) "prescribed" means prescribed by rules made under this Act on the recommendations of the Council;

The law empowers the Government to issue rules to facilitate the implementation of the provisions of the Act, or to carry out the objects of the law. Whenever the term 'prescribed' is used in the Act, one must draw reference to the relevant rules that may be issued in respect thereof. Although various provisions states that something will be 'prescribed', there is no requirement that without being prescribed it will not be operational. That is, enabling provisions to 'prescribe' may not be required to be acted upon as the general understanding of procedure may suffice. And in case something specific is to be done, then specific rule is to be 'prescribed. For e.g., section 50(2) states that the manner of computing interest will be prescribed does not mean that there 'must' be a rule as to 'how to multiply' the rate of interest with the amount of unpaid tax to arrive at the amount of interest.

Further, 'prescribed' does not mean all rules must be prescribed at 'all in one place'. It may well be 'prescribed' in any one or more of the rules to further the object of the section. For eg., restrictions and conditions of credit 'to be' prescribed stated in section 16(1) does not mean that all the 'prescriptions' must reside in one rule. As can be seen, 'prescriptions' are in several rules like return under rule 61(5), payment under rule 37 and reversal under rule 42, etc. Experts caution that looking to fault the rules for 'failing to prescribe' may not be very meritorious approach to interpretation of every section that states something 'may be' prescribed.

(88) "principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

The law uses the term 'principal' in the context of two relationships – one in case of the principal and job worker, and the other in case of principal and agent. However, in the provisions relating to job work, the term has a separate meaning, the reference of which is separately provided for. Therefore, one must understand the meaning of the term 'principal' wherever else the term finds a mention, as a reference to the principal-agent relationship.

Agent of the principal is one who carries on the business of supply or receipt of goods or services or both on behalf of another person, being the principal. The agent functions as an extended arm of the principal and therefore, supplies (inward and outward) effected by an agent on behalf of the principal will be treated as supplies effected by the principal. Reference may be had to *Circular no. 57/31/2018-GST dated 04.09.2018* read with corrigendum dated 05.11.2018 where illustrations have been provided as to when a supply *via* agent would be a supply by agent and when it would remain a supply by principal. Entire jurisprudence from Indian Contract Act is borrowed by this circular by making reference to section 182 of Contract law while referencing 'agent'. Refer detailed discussion in relation to 'intermediary' under section 2(13) of IGST Act and illustrations in *Circular 159/15/2021-GST dated 20.09.2021*. The challenge now is to examine if the facts of a particular case fit the facts considered in the illustrations provided in this circular.

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

The principal place of business could be any of the places of business of a person, which is located in the same State in which the registration is intended to be obtained. Generally, this location would be the head office or the corporate office or the billing address of the person, or the address registered under a statute such as the Companies Act, or as specified in the partnership deed. Once a location is chosen, it would be used for correspondence by the GST officers and should therefore be mentioned on the certificate of registration. For multi-locational taxpayers, they would have 1 principal place per State.

The law requires that the books of account shall be maintained at the principal place of business, or may be maintained electronically, on fulfilling the conditions prescribed by the rules.

(90) "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;

The concept of 'a principal supply' emerges only for determining whether a supply is a composite supply or not, and where it is a composite supply, the rate of tax applicable to the composite supply.

Principal supply recognises two or more supplies and arranges them in a two-step hierarchy – a single predominant supply and the ancillary supply(ies).

(a) Supply of laptop and a carry case – In this case, the case only adds value to the supply of laptop and therefore, the case would be ancillary while the laptop comprises the predominant element of the supply. Even where the brand of the case is not the same as that of the laptop, and the supplier can establish that the case is naturally bundled with the laptop in the ordinary course of his business, the supply can be treated as a composite supply.

(b) Supply of equipment and installation/ commissioning of the same – While the recipient actually purchases the equipment, making the equipment the principal supply, the installation makes the equipment usable by the recipient. Even if there is a separate charge for the installation of the equipment, since the service is naturally bundled and provided in the ordinary course of business, the supply would be a composite supply.

(c) Supply of repair services of laptop with parts – As such, it is the skill and expertise of the supplier that makes the laptop function as desired. Whether replacement is necessary or a mere resetting of the existing parts restores the functionality of the laptop is not known to the customer. Where the object of the contract is unknown to the customer, that object cannot be the purpose of the contract. The only object that is known to the customer is the 'repair service' which makes it the predominant object of supply. This would be the position even if the cost of the parts replaced is higher than the cost of service. *However, this theory can apply only where such a replacement is done in the ordinary course of the business of repairing laptops, and such a replacement is naturally bundled with the repair service.*

Neither the cost of each component nor the importance of each component relevant to determine the 'principal' supply. It is the object that is primary in the opinion and knowledge of recipient that helps make this determination. That is, a recipient cannot buy that which he has no knowledge of and whatever it is that recipient has knowledge of, is the principal supply even if that does not comprise substantial part of the total value. Principal supply is that for which the recipient approached the supplier.

(91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

The Government would appoint persons to act as officers of specified classes. However, all such officers would not be 'Proper Officers' under the GST law. It may be understood that the term 'Proper Officer' is to a case or a category of cases. Therefore, a Commissioner having jurisdiction in respect of a taxable person, may authorise certain officers of the GST law to act as Proper Officer in respect of such taxable person.

Further, the officers appointed under the SGST and UTGST laws are authorised to be the proper officers for the purposes of the CGST law. Please examine carefully 'who' is the Proper Officer authorized to take steps under each section. For example, authority to whom a

registered person is assigned or linked (State or Central) is the Proper Officer for section 61. No other officer can take steps to scrutinize returns of the registered person. Similarly, audit under section 65 can be conducted by officers specifically authorized and hence, Proper Officer to whom registered person is assigned or linked cannot carry out audit under section 65. But where a taxpayer is assigned or linked to State jurisdiction, only State audit officers can undertake audit under section 65 and vice versa. However, State Enforcement or Central Intelligence officers can conduct inspection under section 67 regardless of the assignment or linking of GSTIN of each taxpayer.

Circular No. 1/1/2017 dated 26.06.2017 has notified the Proper Officer relating to the provisions of Registration and Composition levy under the CGST Act.

S. No.	Designation of the Officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
1.	Assistant or Deputy Commissioners of Central Tax and Assistant or Deputy Directors of Central Tax	i) Sub-section (5) of section 10 ii) Proviso to sub-section (1) of Section 27 iii) Section 30 iv) Rule 6 v) Rule 23 vi) Rule 25
2.	Superintendent of Central Tax	i) Sub-section (8) of section 25 ii) Section 28 iii) Section 29 iv) Rule 9 v) Rule 10 vi) Rule 12 vii) Rule 16 viii) Rule 17 ix) Rule 19 x) Rule 22 xi) Rule 24

Circular No. 3/3/2017 dated 05.07.2017 has notified the proper officer relating to the provisions other than Registration and Composition levy under the CGST Act.

Serial Number	Designation of the Officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub-section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	i. Sub-sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65 vi Omitted by Circular No. 31/05/2018-GST, dated 09.02.2018 vii. Sub-sections (2), (3), (6) and (8) of Section 76 viii. Sub-section (1) of Section 79 ix. Section 123 x. Section 127 xi. Sub-section (3) of Section 129 xii. Sub-sections (6) and (7) of Section 130 xiii. Sub-section (1) of Section 142 xiv. Sub-rule (2) of Rule 82 xv. Sub-rule (4) of Rule 86 xvi. Explanation to Rule 86 xvii. Sub-rule (11) of Rule 87 xviii. Explanation 2 to Rule 87 xix. Sub-rules (2) and (3) of Rule 90 xx. Sub-rules (2) and (3) of Rule 91

		xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92 xxii. Explanation to Rule 93 xxiii. Rule 94 xxiv. Sub-rule (6) of Rule 96 xxv. Sub-rule (2) of Rule 97 xxvi. Sub-rules (2), (3), (4), (5) and (7) of Rule 98 xxvii. Sub-rule (2) of Rule 100 xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101 xxix. Rule 143 xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144 xxxi. Sub-rules (1) and (2) of Rule 145 xxxii. Rule 146 xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147 xxxiv. Sub-rules (1),(2) and (3) of Rule 151 xxxv. Rule 152 xxxvi. Rule 153 xxxvii.Rule 155 xxxviii. Rule 156
4.	Superintendent of Central Tax	i. Sub-section (6) of Section 35 ii. Sub-sections (1) and (3) of Section 61 iii. Sub-section (1) of Section 62 iv. Sub-section (7) of Section 65 v. Sub-section (6) of Section 66 vi. Sub-section (11) of Section 67 vii. Sub-section (1) of Section 70 viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73 viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74 (Inserted vide *Circular No. 31/05/2018-GST dated 09.02.2018*) ix. Sub-rule (6) of Rule 56

		x.	Sub-rules (1), (2) and (3) of Rule 99
		xi.	Sub-rule (1) of Rule 132
		xii.	Sub-rule (1), (2), (3) and (7) of Rule 142
		xiii.	Rule 150
5.	Inspector of Central Tax	i.	Sub-section (3) of Section 68
		ii.	Sub-rule (17) of Rule 56
		iii.	Sub-rule (5) of Rule 58

(92) "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;

In terms of the definition provided above, we can understand that the following would be the four quarters for the purposes of GST:

(a) January, February and March;

(b) April, May and June;

(c) July, August and September; and

(d) October, November and December.

For any reason, whatsoever, the term 'quarter' cannot be associated with three consecutive months other than those mentioned above. For instance, a composition supplier is required to furnish returns on a quarterly basis – this does not entitle him to furnish a return for the periods June, July and August, even if he obtained registration only on 29th of June.

(93) "recipient" of supply of goods or services or both, means—

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

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

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

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

In transactions involving more than 2 persons, it could result in an ambiguity as to who should be treated as the 'recipient' for filing the return of inward supplies, paying tax on reverse charge basis, determining whether the relationship with the supplier will impact valuation, etc. In this regard, the definition specified the following:

- Where consideration payable: The recipient of supply and place of supply do not affect one another where a consideration is payable for the supply. Irrespective of the place of

supply, the person who is liable for payment of consideration would be the recipient. This would hold good even in the case where the supply is made to person on the instruction of another – i.e., even if the goods are received by a person, if the person on whose instruction the goods are delivered is the person liable to pay consideration, such person giving the instruction would be the recipient.

- Where no consideration payable:
  - Goods: The actual receiver of the goods would be the recipient. Say, for instance, a supplier keeps a counter in the premises of another company for issuing free samples to the employees of the company. The recipients would be the employees, and not the company permitting the use of its premises.
  - Services: The actual receiver of the services would be the recipient.
- The definition of 'consideration' in section 2(31) clearly provides that the consideration can be from the recipient or by any other person. However, the law provides that the person paying the consideration shall be treated as the 'recipient'. It appears that the term 'recipient' referred to in section 2(31) should be read as 'receiver of the supply', and not 'recipient' as defined above.
- In case an agent is appointed by the principal, such agent may also be treated as the recipient of the goods or services or both.
- Recipient is NOT the same as the beneficiary of the supply. Care must be taken to differentiate between these two expressions as understood in commerce. For eg., education is provided to student but education services is supplied to parent (who pays consideration for supply of education to student).

(94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

The law makes several references to this term. The most significant implication of this reference is that it is confined to a registration of a person, who may have (or is required to have) more than one registration. Person liable to register is 'taxable person' but not 'registered person'. Refer discussion under section 2(107) for comparative study.

Every person/ unit of a person requiring registration, i.e., every taxable person, will be treated as a registered person the moment registration is granted to it, excluding cases where a Unique Identity Number (UIN) is granted.

A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other persons who are notified by the Commissioner shall be granted a UIN for certain purposes – such as for refund of taxes on the notified supplies of goods or services or both received by them.

(95) "regulations" means the regulations made by the Board under this Act on the recommendations of the Council;

The Central Board of Indirect Tax and Customs* constituted under the Central Boards of Revenue Act, 1963 (Board) is empowered to make regulations consistent with the Act and the rules made under the Act, to carry out the provisions of the Act.

Every regulation made by the Board under the Act would be laid after it is made or issued, before each House of Parliament, while it is in session, at the earliest. Where both Houses agree in making any modification, or that the regulation should not be made, the regulation shall have effect only in such modified form or be of no effect from such date (i.e., no retrospective effect of the modifications/ rejection by the Houses of the Parliament).

(96) "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;

The term "removal'' is relevant in the case of supply of goods. Under the Central Excise Rules, 2002, the term 'removal' also included the act of issue of the goods for captive consumption. However, under the GST law, there must be a supplier, and a recipient who is distinct person. Therefore, removal of goods used within the factory would not constitute an outward supply (while input tax credit restriction implications could arise).

Under the GST law, the significance of this term arises for raising invoice, which in turn, is an element essential to determine the time of supply. The law clearly specifies that the removal need not be effected by the supplier himself, but could also be a result of collection of the goods by the recipient or a person acting on his behalf like job worker, agent. Further, this term would be relevant only to the extent of supplies requiring movement of goods.

Please take note that in GST, 'removal', 'movement' and 'delivery' have been used and each have their independent meanings and are not to be understood to be synonyms. General understanding of these terms and their differences are that Removal is handling over or collecting of goods to be taken away or carried away, by supplier or recipient, even without commencement of actual transportation of the goods to the destination. Movement is the physical transportation by the person taking the responsibility of transportation which may be supplier, recipient or other carrier. Delivery is a legal concept of completion of appropriation in favour of recipient so as to complete supplier's obligations in respect of the supply. Removal is a decisive first step towards commencement of supply. Delivery is the decisive last step towards completion of supply. Movement is all the observable activity occurring in between.

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

The term 'return' is used in this law, as under other taxation laws, refer to a document by which details of transactions are furnished to the relevant tax department. This term is also used under the GST law, to refer to returning-back goods after they have been delivered to customers (commonly known as purchase returns, sale returns). However, term does not refer to any 'one' specific document that is filed. If includes 'any' document titled 'return' which may

be prescribed or required to be furnished by CGST Act or CGST Rules. Reference may be had to section 61 and 62 to understand which 'returns' attract those provisions and then compare with what may be understood as 'return' in each context.

(98) "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;

The scheme of payment of tax under reverse charge mechanism would prevail under the GST Law, as is existent in specific cases of services, and in case purchases from unregistered dealers under the VAT law. However, in the GST law, the scope of reverse charge is expanded to include:

(a) Goods (in addition to services) that may be notified, even if the supplier is registered;

(b) Services (in addition to goods), for taxation on reverse charge basis where the supplier is unregistered and supplied to specified classes of recipients who are registered.

The following aspects need to be noted:

- The scheme of partial reverse charge or joint charge, previously prevailing under the Service tax laws does not continue in GST;
- Persons required to pay tax under reverse charge are required to obtain registration under the GST whether or not they make any outward supplies, and without having regard to the threshold limits for registration – in case of notified goods and services;
- Composition suppliers being recipients of supplies on which tax is payable on reverse charge basis, will have to remit tax at the applicable rates, and not the concessional composition tax rates;
- The recipient paying tax on reverse charge basis, should issue a 'payment voucher' at the time of making payment to the supplier;
- The recipient paying tax on reverse charge basis on account of effecting inward supplies from unregistered persons, should issue an invoice in respect of the goods or services inwarded, at the time of receipt of such goods or services.

(99) "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

The Revisional Authority is empowered to pass an order to enhance or modify or annul a decision/ order under CGST/SGST/UTGST Acts as is passed by an officer sub-ordinate to him, where he finds it to be prejudicial to the interest of revenue if it is erroneous, illegal, improper or has not considered material facts (whether or not available at the time of the original decision/order). However, such powers are not available to him in case of non-appealable orders.

Refer section 108 and the discussion ensuing to understand the overstretched authority of an administrative authority being permitted to interfere with an order of the First Appellate Authority which is, for all practical purposes, a judicial function being discharged. *Notification No. 5/2020-CT dated 13.01.2020* has notified 'Revisionary Authorities' under Central Tax.

(100) "Schedule" means a Schedule appended to this Act;

The following three schedules are provided under the CGST Act to describe the extent/ limitation of the meaning of the term 'supply':

(a) **Schedule I:** Activities to be treated as supply even if made without consideration

- Permanent transfer or disposal of business assets on which input tax credit is availed. Please note that the condition of 'on which input tax credit is availed' whether it applies only to disposal of business assets or also to the previous expression of permanent transfer is interesting to analyse due to the disjunctive 'or' present separating the two transaction. Also, when credit is reversed on business assets disposed (under section 17(5)(h)) then those transactions of disposal of business assets will not come within the fiction of schedule I. But permanent transfer (not being the same as disposal) of any business asset attracts the fiction of schedule I.
- supplies between related persons or persons having the same PAN. Please note that the transaction must be a supply except for their relationship requiring a re-examination (between related persons) or when transaction is missing an ingredient of two-persons to the transaction (distinct persons by fiction in section 25).
- supply of goods by a principal to his agent and vice versa. Please note that the transaction must already be a 'supply' and schedule I only furnishes a remarkably different treatment by this fiction.
- import of services for business purpose, by a person from a related person.

(b) **Schedule II:** Activities or Transactions to be treated as supply of goods or supply of services

1. Transfer

(i) any transfer of the title in goods is a supply of goods. Please refer to the difference between 'transfer' and 'sale' in the discussion under section 7 and recognize that all cases where title 'gets' transferred, it is required to be treated by the fiction in schedule II as a supply of goods and not as services. Please also note that transfer is not the same as extinguishment or consumption. Extinguished is when goods are consumed in the course of performance of a contract and this, not being transfer, may be open to treatment as supply of services. For eg., Job-work involving consumption of catalyst or welding rods, etc;

(ii) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services. Although goods are involved in such a

transaction and their movement requires use of e-way bill, transaction will continue to be treated as supply of services and not as supply of goods;

(iii) *any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.* Here, title may pass after all instalments are paid like hire purchase, but the treatment required due to schedule II is that it will be supply of goods and not services. Please differentiate 1(b) and 1(c). There is enough guidance in ICAI material on AS/ IndAS to make this differentiation by examining the contract terms of each of these arrangements.

2. *Land and Building*

(i) *any lease, tenancy, easement, licence to occupy land is a supply of services.* Please note that these four expressions are not synonyms but need careful study based on the definition and authorities under Transfer of Property Act, 1882 Indian Easement Act, 1882, Limitation Act, 1963 and Indian Contract Act, 1872. So, there is much to be discussed but better understood by reference to any good material under each of these laws to be able to correctly identify the nature of the transaction for GST purposes. For e.g., If a CA owned rubber trees and gave a contract for extraction of latex, would it be a contract for services of extraction benefits arising from land or contract for sale of goods (latex)?

(ii) *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.* Use of words like 'letting out' requires identification of the presence of underlying arrangement.

3. *Treatment or process*

Any treatment or process which is applied to another person's goods is a supply of services. Please note that reference to expression 'treatment or process' is deliberate use of words and covers larger area than 'manufacture'. In other words, even if the said treatment or process does not amount to manufacture, that is, emergence of a new and distinct commodity, it would remain an activity that will be treated as supply of services. And this would apply even when the person carrying out the treatment or process adds or incorporates goods of his own to the output brought out from the treatment or process. And the person for whom this treatment or process is carried out may or may not be registered, yet it will be treated as supply of services. Compare the scope of this paragraph with the definition of job work in section 2(68). Treatment or process includes repair activity (as it is not limited to job-work) and all repair activities will be a service.

4. *Transfer of business assets*

(i) *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. This clause deals with goods (inventory and assets) that exit the business without being retained for continued use in any transferred business will be treated as a supply of goods. Paragraph 4(a) may be related to paragraph 1 in schedule I referring to 'permanent transfer or disposal of business assets'. The treatment of such supply will now be liable to 'treatment' prescribed in this paragraph 4(a). It is important to note that such transfer of disposal must be 'by or under' directions of person carrying on the business. This paragraph applies to (i) 'taking assets out of use in business' and (ii) 'by way of a transfer or disposal', that would first be a supply under schedule I and then suffer the treatment under schedule II;

(ii) 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. This treatment may also be examined along with paragraph 1 of schedule I. Special care is needed when there is 'change of use' of assets that were once entered into business at the time of their receipt. This paragraph applies to (i) 'taking assets out of use in business' and (ii) 'not by way of a transfer or disposal' but merely 'change of use', that would first be a supply under schedule I and then suffer the treatment under schedule II;

(iii) 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. Please note that this clause does not provide the 'treatment' (as supply of goods or supply of services) but merely declares that deregistration will occasion a supply by fiction in schedule II. Also, reference may be had to discussions under sections 2(17)(d), 18(6) and 29(5) of CGST Act. Please also note that 'assets of a business' must be understood not merely as capital goods or inputs in stock but all assets in the business – tangible and intangible – that will be treated as supply of goods in all these cases when the transfer occurs in any arrangement for 'transfer of business'. Transfer of business is evidenced not by itemized sale but sale as going concern. It is be recognized that transfer of business may be by way of demerger, slump sale or other recognized modes under other substantive laws. Also, 'deemed to be supplied' appearing this paragraph does not attempt to usurp authority to define what is supply but merely to state that the factum of supply having been established will be saved in the circumstances listed in the sub-paras.

5. Supply of services

(i) renting of immovable property. Please note that 'renting' is an expression that is popular but not explicit either as lease or license as understood under Transfer of Property Act. Care is needed to identify the nature of arrangements involving immovable property. Also please note that immovable property includes land, building and intangible interests in such land or building as well as benefits arising from land and building;

(ii) 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 after its first occupation, whichever is earlier. Please note that this clause is explicit, even if overlapping with other paras in this schedule II. But the remarkable aspect here is that incomplete building is expressly made taxable even though Courts have held that construction for self ought not to be taxed in the absence of a contract to sell (or supply in GST);

(iii) temporary transfer or permitting the use or enjoyment of any intellectual property right. It may be noted that permanent transfers are excluded as IP are also goods. IP may form part of an overall arrangement and suitable treatment may be given in such comprehensive arrangements based on the principle of composite or mixed supply;

(iv) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software. Software is goods (4907 or 8523) but where supply involves software services that are not goods (which are like shrink wrapped software), only those transactions are treated as supply of services (falling under 9973 or any other suitable entry);

(v) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Please note that supply is not only a 'positive' transaction but also 'negative' transaction or 'inaction'. For this reason, CGST Amendment Act has even edited the title of schedule II; it is very interesting to note the placement of 'commas' in this paragraph. Not every occasion where there is a deduction of payment can be attributed to a supply under this paragraph. There must be an agreement to perform an obligation that involves (a) refraining from an act or (b) tolerate an act or a situation or (c) to do an act. It is very important to satisfy these ingredients and not assume these ingredients are present before liability can arise under this paragraph. There is no necessity that to be liable to tax as 'agreeing to obligation' there must be a separate and distinct agreement for the same. Such an agreement can be collateral aspect within an agreement for supply for something

else. As long as the payment of consideration is on account of 'agreement' to either (i) perform an obligation to refrain from an act or (ii) tolerate an act or situation or (iii) to do an act, the same will be treated as a 'service'; and

(vi) 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. Refer also paragraph 1(b) to identify consistency in treatment whether goods are leased or licensed.

6. Composite supply

(i) works contract as defined in clause (119) of section 2; and

(ii) 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. Please note that this fiction requires goods in packed condition when including in the supply as described in this paragraph will continue to be treated as supply of services. As service is not a verb but a noun, once the supply comes within the mischief of this paragraph, then it will always be treated as a supply of services. There is no occasion to search for goods within this supply and vivisect them contrary to the fiction in this paragraph.

~~*[7. Supply of Goods*~~

~~*Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.* Please note that supply of goods 'to' members will be treated as supply of goods. Reference may be had to the section 2(17) (e) above.~~ Deleted in view of retrospective amendment to section 7(1) by insertion of clause (aa) with retrospective effect from 01.07.2017][13].

(c) **Schedule III:** Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

1. Services by employee to employer in the course/ relation to employment. Please note that 'in relation to employment' does not grant immunity from all matters listed in the terms and condition in employment letter. Only those emoluments flowing from employer to employee for the services performed by employee are not treated as supply. Service by employer to employee are however not free from this incidence. Assertion made under income-tax in respect of payment 'as' salary will hold away with regard to this exclusion from supply.

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[13] Omitted vide the Finance Act, 2021 dt. 28.03.2021- Applicable w.r.e.f. 01.07.2017, notified through Notf No. 39/2021-dt. 21.12.2021. Applicable w.e.f. 01.01.2022.

2. Services by any Court or Tribunal

3. Functions performed by the Members of Parliament, etc., duties by persons holding Constitutional office or duties performed in a body of the Government

4. Services of funeral, burial, crematorium or mortuary, etc.

5. Sale of land and sale of completed buildings. Care must be taken NOT to assume every transaction involving immovable property is without this exclusion. Also 'sale' means 'absolute sale' and not sales via GPA or other instrument.

6. Actionable claims, other than [14](specified actionable claims).

[15][[16][7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]]

Explanation [17][1].-For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

[18][Explanation 2.–– For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.]

Notice that while laying down that certain 'activities or transactions' will be treated neither as supply of goods nor supply of services, the word 'supply' is used. If these activities or transactions WILL NOT be supply, it is a wonder that the word supply is

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[14] Substituted vide The Central Goods and Services Tax (Amendment) Act, 2023 dated 18.08.2023 notified through Notf. No. 48/2023-CT dt. 29.09.2023-Applicable w.e.f. 01.10.2023 before it was read as, "lottery, betting and gambling".

[15] Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1-7-2017 notified through Notf No. 02/2019-CT dt. 29.01.2019. Brought into force w.e.f 01.02.2019.

[16] Made effective retrospectively w.e.f. 01.07.2017 vide the Finance Act, 2023 notified through Notf No. 28/2023-CT dt. 31.07.2023. Applicable w.e.f. 01.10.2023. It has also been clarified that no refund shall be made of all the tax which has been collected, but which would not have been collected, had para 7 and 8 of schedule III and explanation 2 thereof, been in force at all material times.

[17] Numbered vide Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. Notified through Notf No. 02/2019-CT dt. 29.01.2019.

[18] Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.r.e.f. 1.07.2017. Notified through Notf No. 02/2019 -CT dt. 29.01.2019- Brought into force w.e.f. 01.02.2019. Made effective retrospectively w.e.f. 01.07.2017 vide the Finance Act, 2023, notified through Notf No. 28/2023-CT dt. 31.07.2023-Brought into force w.e.f. 01.10.2023.

used in listing them. Resolution of this drafting approach would imply that (a) these transactions would be a supply in the normal course of the definition of supply but for this exclusion and (b) while any TREATMENT is to be given under section 9 or 17 or other provision, value of these activities or transactions will be EXCLUDED from such TREATMENT.

When is it so understood, transactions listed in schedule III would also be liable for disclosure and reporting in GST returns. For e.g., Table 5 in GSTR-9 clearly requires disclosure of activities or transactions that are 'no supply' for scrutiny of compliance by tax administration.

(101) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

Section 2(h) of the Securities Contracts (Regulation) Act, 1956 provides an inclusive definition to the term "securities", listing the following—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iib) rights or interest in securities.

Securities have a very expansive definition and must be differentiated from financial contractual arrangement. Please consider examples of commodity futures, interest swaps, etc. Securities are neither treated as goods nor as services, by way of a specific exclusion in the respective definitions. Contracts where there is 'no intention to deliver' may also come within the definition of securities but not when they are private arrangements where the question of 'intention to deliver' is not reliably documented may be liable to GST on the advance and on settlement, as applicable.

For this reason, 'securities' would not be included in the meaning of 'non-taxable supplies' which are in turn included within the meaning of 'exempt supplies'. Therefore, for the limited purpose of restricting input tax credits, the meaning of exempt supplies would include 'securities', and therefore, input tax credit attributable to transactions in securities would be liable for reversal.

Please also note, securities are dynamic as can be seen from the definition borrowed from SCRA where any instrument is recognized by SEBI would become securities where the intention is not to supply the underlying article. For e.g., Forward contract in commodities.

Crypto-articles are NOT included as 'securities' under SCR Act even though they are 'traded' similar to securities and even on an online platform that is referred as 'exchange'. Without recognition in law, mere use of popular expressions does not include them within the legal understanding of those expressions.

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

[19][Explanation.–For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities]

Express exclusion of 'goods' implies its inclusion within the definition of 'services'. Therefore, understanding the exact scope and boundaries of the definition of goods is required to recognize all those transactions or activities that would fall under the meaning of 'services', for being left out of the definition of 'goods'. Transactions in money (other than its conversion) are excluded both from the definition of goods and from the definition of services. 'Anything' includes everything and leaves nothing – services include goods and for this reason 'other than goods' appears in the definition. But for such exclusion it would have been included. And services include immovable property as well. Transactions involving immovable property to the extent excluded by paragraph 5, schedule III only. All other transactions involving immovable property comes squarely within the scope of expression 'services'.

Service charges such as processing fees, documentation fees, broking charges or any other fees or charges are charged in relation to transactions in securities; the same would be a consideration for provision of service and hence chargeable to GST. Services is therefore not a verb but a noun. As such, there is no need to search for the activity performed in a transaction involving services but sufficient to note that it is not goods then it will be services. If this manner of drafting the definition that allows tax to be imposed on transactions of tolerating an act or abstaining from an act as found in paragraph 5(e), schedule II.

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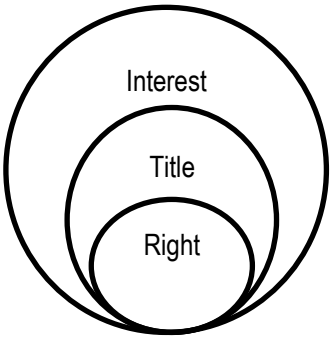
[19] Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, notified through Notf No. 02/2019-CT dt. 29.01.2019.

The following aspects need to be noted:

- The word "anything" appears to covey something very vast like "everything", i.e., services means everything that is not goods, and is not specifically excluded (such as money, securities, transactions specified in Schedule III, etc.)
- Schedule II of the CGST Act lists down matters which shall be regarded as a supply of goods, or supply of services.
- The GST law empowers the Government to require treatment of supply of notified goods as supply of services, and *vice versa*.

It would be appropriate to briefly discuss certain concepts of 'immovable property' as application of these concepts is relied upon in various other places:

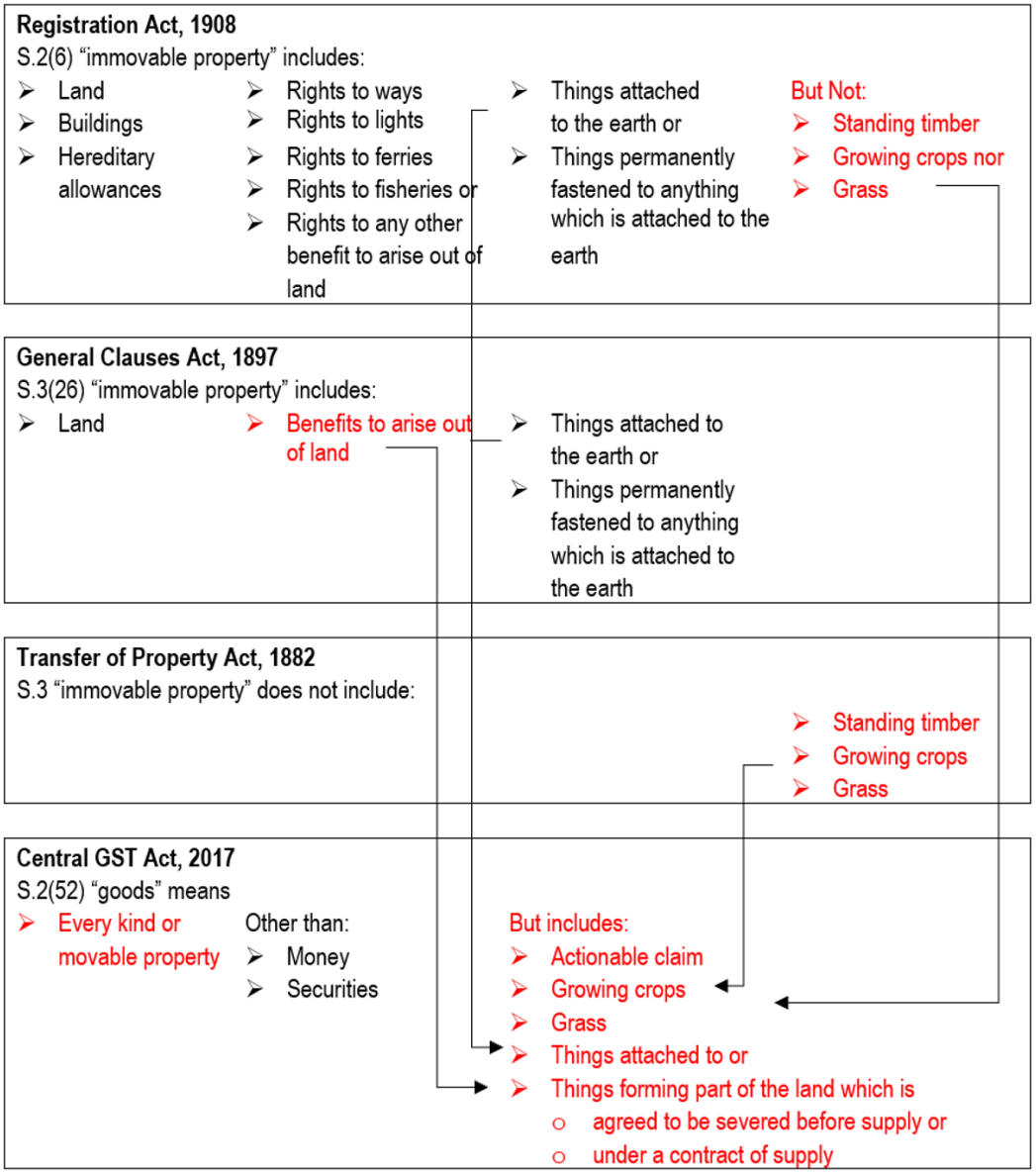
- Immovable property is not defined in Transfer of Property Act, 1882. Reference must be had to section 3(26) of General Clauses Act, 1897 and to section 2(6) of Indian Registration Act, 1908 to understand the definitions. Hon'ble Madras High Court stated in *Mohammed Ibrahim v. Northern Circars Fibre Trading (AIR 1944 Mad 492)* that these two statues are in *pari materia* with TP Act and ignoring the definitions in these statutes will be wrong in the absence of a clear bar in doing so.



- Immovable property may seem to be well understood but consider this – do we understand what 'intangible immovable properties'. are Land and building is a common image that comes to mind when we think about immovable properties but that is not all. Rights, title and interests 'in' immovable properties are also immovable properties themselves. Consider the following diagram where (i) 'right' is a sub-set of 'title' and titleholder will definitely have all the rights but one who has one or other right need not have title over the property (ii) interest lies outside these spheres where it traverses 'title' and 'rights' and still not both such that one who has 'interest' in immovable property may still not have 'title' and therefore his 'rights' may be limited and not identifiable with specific rights and (iii) understanding rights is important due to the implication a contract conferring rights such as easement rights or mining rights or forest lease or excavation rights or rights to take forest produce or tights to draw water or development rights or agency coupled with interest or other such rights that are created by contract and taxable as supply of goods or as services. But all these may still be inferior to 'absolute sale' (of land or of completed building) and not be saved by schedule III.
- It is important to understand the nature of 'rights'. There are 'rights' and 'rights to rights'.

Rights are comprised of four components (i) one who has the right (ii) one against whom those rights exist (one person or world at large) (iii) object over which those rights exists and (iv) the title giving the extent or limits of those rights.

- Rights are (a) acquired (b) derived and (c) extinguished. It is important to trace back every right to the point when it came to be vested. Rights may exist but only when they come to irrevocably reside as a 'right' (with all four components listed above) will they be indefeasible rights as discussed in *Eicher Motors Ltd. v. UoI (1999) 106 ELT 3 (SC)*. Rights 'not yet vested' can be taken away by (i) operation of law or (ii) lapse of time being inaction during the time prescribed. Perfection of rights is called 'vesting of rights'. Vesting conditions may be (a) actions by party or (b) events specified in law. Failure of these vesting conditions vitiates those rights and the benefit underlying those rights that do not flow to the party will flow back to the Government, who was allowing this benefit.
- Not all-time limits are to be understood as 'limitation', some time limits operate as 'prescription'. Limitation is where the right to enforce something (say, claim of export refund within 2 years) will be lost although the right itself will remain (input tax credit on exports will remain and be available for utilization). Prescription is whether the right itself will be lost. When a valuable right is lost, it is called 'extinctive prescription' and it result in the underlying value flow to the person against whom such right would be exercisable, that is, the Government. And when the right is lost, Government now acquires the right; it is called 'acquisitive prescription'. These are two sides to one event that operates as a prescription.
- Please consider the definition of 'immovable property' from various statues arranged in a tabular manner for understanding the different groups of properties in each definition:



- Now examine the extent of change brought to these definitions by the inclusion of *"….growing crops, grass and things attached to or forming part of the land…."* In the definition of 'goods' in CGST Act. There will be some realignment required (shown by arrow marks) in the way we apply the definitions from these time-tested statues in the context of GST law. In the light of these 'realigned definitions' from substantive laws, consider the discussion below with regard to various forms that 'immovable property' takes.

- Land is one of the examples of immovable property. There are many other examples that comprise the entire universe that makes up immovable property. Land is not the same as immovable property.
- When land is sold along with fruit-trees on it, it is to be seen if the trees are to be severed from the land or not. If not, the land will include the trees and the Sale Deed will be made for the land along with all things attached to it. But if the trees have to be severed and sold, then it is not a deed for sale of land but sale of timber from those trees. And this would be supply of goods and not sale of land (covered by schedule III);
- Land and benefits arising from land are not one and the same because while retaining the land, benefits arising from land can be transferred and conveyed. So, it is important to understand land and these 'benefits arising' from land as two different species of immovable property. For e.g., fruit tree is immovable property and fruits from that tree are 'benefits arising' from that immovable property.
- 'Benefits arising' can be past or future. That is, benefits 'to' arise out of land is different from benefits 'already' arisen on the land. So, if the benefits have 'already' arisen on the land, then they are goods due to the specific definition in section 2(52) of CSGT Act. And if they are benefit 'to' arise out of land, then they are not goods hence, they are services due to definition in section 2(102) of CGST Act. Please note that in respect of crops, definition in CGST will prevail over Transfer of Property Act due to express inclusion.
- 'Benefits arising' can be other than crops also. Any benefit that is 'inextricably' due to land will be such kind of 'benefits arising' from land. For eg., iron ore, sand, diamonds, etc. Reserves in mother Earth is also 'benefits arising' from land because they have to be 'extracted'. It is also called 'winning of minerals'. Though mineral deposits must already be existing in the earth, it is still referred in future tense because it cannot be known until they are actually mined. Such 'benefits arising' from land are 'to' arise and hence immovable property (or services) not 'already' arisen to be called movable property (or goods). This interpretation flows from *State of Orissa v. Titagarh Paper Mills Co. Ltd AIR 1985 SC 1293*.
- Equipment installed and erected at site may or may not be immovable property. Under Central Excise, the test has been 'purpose of affixation' and under Sales tax, the test has been 'dismantling without substantial damage'. Based on the three limbs to the definition of 'attached to the earth' in section 3 of TP Act, it appears that if the attachment (of equipment) is for beneficial enjoyment of the land (or building), then equipment becomes immovable property itself. But, if the attachment is for the beneficial enjoyment of the equipment then, equipment remains movable property. These principles were expounded in *Subramaniam Chettiar v. Chidambaram Servai AIR 1940 Mad 527* which were reiterated in *CCE v. Solid and Correct Engineering Works 2010 (252) ELT 481 (SC)*.

- All immovable properties are not tangible. There are intangible immovable property too. A certain immovable property may itself be tangible but certain rights or interest 'in' such immovable property may be intangible. For e.g., where a tenant has right to let-out the property to a sub-tenant, that right or interest that the tenant has 'in' the property is an intangible immovable property.
- Standing timber, growing crops or grass are EXCLUDED from the interpretation clause in Transfer of Property Act from the scope of 'immovable property'. But, section 2(52) of CGST Act includes *'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'* within the definition of 'goods'. This needs to be reconciled as follows:
    - Landowner selling fruits grown in his own land is selling fruits. Landowner allowing a fruit-seller to enter and extract fruits grown by the landowner is also a case of sale of 'benefits arising' from land which is goods (fruits) in this case. Landowner who allows this fruit-seller for the next 5 years to enter and extract fruits that would be grown is a case of sale of 'rights to BAOL' which is service (fruits-in-future) in this case.
    - Fruit-seller can retain the 5 year contract and make annual payments towards supply of services by landowner. Or, the fruit-seller may sub-license or transfer the 'rights to those benefits' that have not yet arisen from land and are agreed (by Parties) to arise in future years (refer earlier discussion about 'rights' and 'rights to rights'). Please note, goods (fruits being 'benefits to arise') are exempt from GST but services (fruits-in-future being "rights to BAOL") are not exempt from GST.
    - Growing crops is included in definition of 'goods' but the key phrase in this definition is *"which are agreed to be severed"*. Where there is an agreement to 'severe' the benefits that have arisen in the process, fully from land, then even though it is still growing, it is goods that are 'agreed to be supplied' which is taxable *(Shantabai v. State of Bombay AIR 1958 SC 532)*.
    - Standing crop is crop that is no longer growing and is now fit for harvesting. So, growing crop is clearly goods if it is included in any transaction. For eg., a 100 acre land with silver oak trees is given on 5-year lease, it is a case of lease of land if the condition is to return that land 'in original condition' with all those trees. But, if that lease is given for 6-months with the condition to return of land only, then obviously it is a case of sale of trees and the consideration is paid for felling those trees and taking them away *(Mahabir Prasad v. Enayat Elahi AIR 1951 All 608)*.
- Given that 'benefits that have already arisen' from land may be movable property (taxable as goods) or immovable property (taxable as services), 'rights to Benefits arising out of Land' will always be immovable property (taxable as services). Sufficient

to mention concept of 'profit a prendre' that is understood under Indian Easements Act, 1882 which is a also called 'right of taking' something from the land. Please note that fruits are 'benefits arising' from land but the 'right to future benefits' (yet to arise from land) with the permission to continuously take away fruits-in-future (*Anand Behara v. State of Orissa AIR 1956 SC 17*).

- Hereditary allowances, rights to ways, lights, ferries and fisheries are also listed in section 2(6) of Indian Registration Act, 1908 which requires more careful study of these immovable properties and contrast all of them with the limited exclusion in paragraph 5 of schedule III of CGST Act for a better appreciation of the scope of 'services' in CGST Act.

[20][(102A) "specified actionable claim" means the actionable claim involved in or by way of—

(i) betting;

(ii) casinos;

(iii) gambling;

(iv) horse racing;

(v) lottery; or

(vi) online money gaming;]

"Online money gaming" shall have the same meaning as assigned to it in clause (80B) of section 2 of the Central Goods and Service Tax Act, 2017 (12 of 2017).

(103) "State" includes a Union territory with Legislature;

Each State derives its respective meaning provided in the First Schedule in the Constitution of India. There are 28 States and 8 Union Territories in India. Of the 8 Union Territories, Delhi, Jammu & Kashmir and Puducherry have Legislatures of their own. Therefore, for the GST law, Delhi, Jammu & Kashmir and Puducherry, though Union Territories, will be included in the expression 'State'.

(104) "State tax" means the tax levied under any State Goods and Services Tax Act;

Tax levied under the State GST laws is referred to as "State tax". State tax is that component of GST that levied on intra-State supplies by the State Governments (or the Legislatures of Delhi, Jammu & Kashmir and Puducherry), under the respective State-specific GST laws.

[20] Inserted vide The Central Goods and Services Tax (Amendment) Act, 2023 dated 18.08.2023 w.e.f. 01.10.2023. Notified through Notf No. 48/2023-CT dt. 29.09.2023.

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

[21][Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims;]

The reference to whom the meaning of the term 'supplier' is fitted is 'person', as against 'taxable person' or 'registered person'. This is because the law does not keep persons who are not liable to tax under GST, outside the scope of this term. For instance, in case of purchases from unregistered persons, who are not liable for registration, would also be treated as suppliers, while the recipient of the supply is liable to pay tax on reverse charge basis if such recipient is registered.

Agents supplying on behalf of the supplier are also included within the meaning of 'supplier'. This is to ensure that invoices raised by the agent on behalf of the supplier for effecting sales on his behalf qualify as valid invoices, as if they were issued by the supplier himself.

(106) "tax period" means the period for which the return is required to be furnished;

Given that the term 'return' is not limited to any particular return, the term tax period can also vary for each return prescribed under the law. A 'tax period' would ordinarily be the calendar months (or quarters ending on the last dates of March, June, September and December in case of composition suppliers).

This definition assumes great significance in the context of tax compliance. Please consider if tax arrears of a certain month can be paid out of credits in a future month by delaying the reporting of outward supply until the time when credits become available. Tax compliance cannot be viewed on an annualized basis but for each tax period.

Taxpayers assume that taxes need to be collected and paid for the 'financial year' such that set-on and set-off adjustment is carried out within the months in the given financial year. But GST law is very clear in section 59 for 'each' tax period the liability must be discharged.

Further, when appeals are to be filed, appeal in respect of each 'tax period' would be required. Clue can be taken from the adjudication order numbering which will clearly indicate that each 'tax period' is adjudicated individually.

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[21] Inserted by the Central Goods and Services Tax (Amendment) Act, 2023, w.e.f. 1.10.2023. Notified through Notf No. 48/2023-CT dt. 29.09.2023.

While notice can be issued for multiple tax periods at a time but self-assessment must be carried out strictly for 'each' tax period. Merging multiple tax periods in discharging liability of earlier tax periods out of credits accruing in later tax periods can be perilous. Clarification in *Circular 172/4/2022-GST dated 06.07.2022* (para 6) permitting payment of 'any tax' out of balance in credit ledger does not mean payment of 'any tax periods' tax liability. Tax so discharged, experts caution, can attract demand for tax period to which the liability pertains which cannot be satisfied out of credit accruing in later tax period (and discharge liability of earlier tax period).

Concept of one-to-one correlation does not exist in GST but, that refers to utilization of credit belonging to one line of business to discharge liability of another line of business.

Care must be taken that wrongly utilized credit (belonging to later tax period) will require a refund application to be filed which may be rejected and credit restored via PMT-03 under rule 93, but this approach is circumscribed by limitation of 2 years. But output tax liability (belonging to earlier tax period) may still be demanded. Experts opine that intervention by Government alone will overcome this impasse due to inapplicability of section 77 of CGST Act (or section 19 of IGST Act) in these situations where the wrong tax and right tax are both under the same statute.

(107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

Every 'supplier' shall be liable to be registered under the GST law 'in the State' (or Union territory) 'from where' he makes any taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the specified limit (Rs. 20 Lacs or Rs. 10 Lacs / Rs.40 lacs in case of persons dealing only in goods – refer section 22 for details). A person will become a taxable person if he attracts section 9(1) or 9(5). But a non-taxable person will become liable to registration even if he attracts 9(3) or 9(4) and on default under section 79(1)(vi).

The following persons (amongst others) are also compulsorily required to obtain registration, whether or not their turnover exceeds the threshold limit:

- Non-resident taxable persons, casual taxable persons making any taxable supply
- Persons making any inter-State taxable supply;
- Recipients of supplies of goods or services that are notified for tax on reverse charge basis;
- Persons such as agents who make taxable supplies on behalf of other taxable persons;
- Electronic commerce operator and persons effecting supplies through them;
- Person supplying OIDAR services from a place outside India to an unregistered person in India.

Care must be taken not to interchange 'taxable person' with 'business entity'. Business entity is an expression that is very commonly found in GST notifications, especially, in *Notification 13/2017-CT(R) dated 28.06.2017* on RCM. Here, it must be noted that any inquiry must be limited to whether or not the person (legal entity) is engaged in 'business' as defined in section 2(17) with all its expansions and fictions. There is a definition that we can find in clause 2(n) but under *Notification 12/2017-CT(R) dated 28.06.2017 "(n) "business entity" means any person carrying out business;"* which throws some light. It is not to be examined whether or not the person is registered but the activities must come within definition of business even if person is not registered which may be due to threshold limit in section 22. A person who is not engaged in business but registered for payment of GST under section 9(3) may scarcely be able to stay out of being considered to be a 'business entity'. And tax payment under 9(3) is itself required when the specified inward supplies are to be 'business entity'. So, fact that person is registered for discharging tax under section 9(3) itself operates as a presumption about being a business entity. Registration for purposes of section 9(4) is altogether required by a person who is registered, therefore, the question of examining whether such a person is a business entity or not may be only academic.

Attention must be paid to the fact that 'taxable person' is not same as 'registered person' [2(94)] as every taxable person is made liable to pay tax under section 9(1) but only a registered person is eligible to claim input tax credit under section 16(1). Unless taxable person obtains registration, output tax liability will remain but without benefit of input tax credit. Registered person in one State will be unregistered person in other States where no such registration is held by the business entity.

(108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

For a transaction to qualify as a taxable supply, the following components are compulsory:

- The transaction must involve either goods or services, or both of them;
- Such goods or services should not be specified under Schedule III (neither a supply of goods nor a supply of services);
- The transaction should fall within the meaning of 'supply' in terms of section 7 of the CGST Act;
- The supply should be leviable to GST – i.e., it should not be covered within the meaning of 'non-taxable supply' as defined under section 2(78) – i.e., alcoholic liquor for human consumption. This implies that supplies enjoying a full exemption from tax by way of an exemption notification would also be treated as taxable supplies.

Please note the expression 'taxable supply' must be distinguished from 'taxable goods or services'. Please see its usage in section 51 versus section 52. When expression used is 'taxable supply', then even when exempt, it would come within the said definition. But not so, when the expression used is 'taxable goods or services'. Care must be taken not to view these

seemingly similar expressions as synonymous. Section 51 uses the expression 'taxable goods or services or both' whereas section 52 uses the expression 'taxable supplies'.

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

The scope of taxable territory extends to the whole of India. As such, high sea sales and merchanting trade transactions (e.g., buy from China and directly ship to Germany) are transactions of any one 'taxable person' (of the same legal entity) but occurring outside taxable territory. As the words of section 7(5)(a) are 'supplier located in India' and not 'location of supplier is in India', such transactions occurring beyond the taxable territory of India would also be inter-State supplies but non-taxable as the levy is not attracted. Any taxable person would fit the expression 'supplier located in India' meaning the 'person who supplies' and not the Consignor (in China). Care may be taken to note this subtle difference in the words in section 7 of IGST Act.

(110) "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 electromagnetic means;

The scope of the term 'telecommunication service' is so vast that it covers services starting from the landline facility for making calls, text messages, voice messages, communication through media such as WhatsApp, Skype, etc., to services provided by Gmail, yahoo, etc.

(111) "the State Goods and Services Tax Act" means the respective State Goods and Services Tax Act, 2017;

The SGST Act means that SGST Act of the relevant State (or Delhi or Puducherry or Jammu & Kashmir), as the case may be, which provides for levy and collection of tax on all intra-State supplies of goods or services or both (except alcoholic liquor for human consumption), i.e., the supply of goods or services or both where the location of the supplier and the place of supply as determined under Chapter V of the IGST Act are located within the same State. Upon passing of the GST law in each of the "States", there would be 28 SGST Acts in India and 3 Union territories with legislature acting as a State.

(112) "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;

The expression 'turnover in State' (or UT) is a replica of the expression 'aggregate turnover', but for the fact that 'turnover in State' is restricted to the turnover of a taxable person, as opposed to aggregate turnover with is PAN-based (i.e., all taxable persons having the same PAN, across States). The following references are made in the phrase in the Act:

- Payment of tax under composition scheme: The tax rate will be applicable on the 'turnover in State' particular to a taxable person, which should be paid by him in the State in which he has obtained registration;
- Distribution of input tax credit by an ISD: In case of the distribution of credit that is attributable to two or more units of the person, the credit shall be distributed amongst such units on a pro rata basis (i.e., ratio of their respective 'turnover in State' to the aggregate of the 'turnover in State' of all such units).
- Turnover in State includes 'all' taxable supplies which includes exempt supplies. When tax is being paid under section 10 on 'turnover in State', the composition rate will need to be applied not on the supplies in respect of which composition is allowed but also other supplies included as 'all taxable supplies' in the State of the each distinct person.

(113) "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 is incorporated or otherwise legally constituted;

The expression 'usual place of residence' comes of use to determine the location of supplier/ recipient of services where no other location is relatable to the supply/ receipt of service.

(114) "Union territory" means the territory of—

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

[22][(c) Dadra and Nagar Haveli and Daman and Diu];

(d) Ladakh

(e) Chandigarh; and

(f) other territory.

Explanation. —For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

All the Union Territories and "other territory" (as defined in section 2(81) supra) in India will be governed under the UTGST Act, except Delhi and Puducherry. Given that the said two UTs have a Legislature, they will be regarded as 'States' for the purpose of GST, and will be governed by their respective SGST laws, instead of the UTGST law. Please consider UT of Ladakh after the J&K Reorganization Act, 2019 has come into force from 31.10.2019. UT of Jammu will have its own legislature therefore, UTGST Act would not apply to UT of Jammu but

[22] *Substituted vide The Finance Act, 2020 w.e.f. 30.06.2020.*

will apply to UT of Ladakh. However, Jammu and Ladakh will both be UTs and not a State for purposes of this clause.

(115) "Union territory tax" means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act;

It refers to the tax charged under the UTGST Act on intra-State supply of goods or services or both (i.e., supplies effected within a Union Territory not having a Legislature), in addition to the tax levied under the CGST law. The rate of UT tax is capped at 20%, and will be notified by the Central Government based on the recommendation of the Council.

(116) "Union Territory Goods and Services Tax Act" means the Union Territory Goods and Services Tax Act, 2017;

The UTGST Act provides for levy and collection of tax on all intra-State supplies of goods or services or both (except alcoholic liquor for human consumption), i.e., the supply of goods or services or both where the location of the supplier and the place of supply as determined under Chapter V of the IGST Act are located within the same UT.

(117) "valid return" means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;

The term 'valid return' is attributable only to the monthly return in Form GSTR-3B or quarterly return in case of QRMP scheme, to be filed by every registered person (except a composition supplier, non-resident taxable person, ISD, person liable to deduct tax at source and person liable to collect tax at source). The return will be treated as a valid return only where the tax liability determined in the return is fully remitted. Please also refer to discussion under section 61 regarding 'elements' of a valid return.

The following aspects need to be noted:

- The law mandates that the liability determined in the returns of previous months' must be discharged prior to discharging the liability determined in the returns of current month;
- Input tax credit will become available to the recipient only if the return furnished by the supplier is a 'valid return'.

Belated return filed along with admitted tax, interest and late fee cannot be treated as 'invalid' for any reason. Acceptance of late fee levied under section 47 does not permit such return to be treated as invalid for any reason whatsoever.

[23][(117A) "virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961 (43 of 1961);]

[23] Inserted by the Central Goods and Services Tax (Amendment) Act, 2023, w.e.f. 1.10.2023. Notified through Notf No. 48/2023-CT dt. 29.09.2023.

As per section 2(47)(A) of the Income Tax Act, a Virtual Digital Asset (VDA) includes **cryptocurrency**, Non-Fungible Tokens (NFTs), and any other digital asset notified by the Central Government in the official gazette. In general, a virtual digital asset refers to any information or code that represents value and can be utilized in various financial transactions. This asset has the capability to be electronically stored or transferred. Additionally, virtual digital assets encompass non-fungible tokens and other digital assets as designated by the central government, excluding both Indian and foreign currencies.

(118) "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

'Voucher', for the purposes of GST, necessarily means that instrument which should be accepted as consideration (wholly or partly) for a supply. Therefore, a voucher is an asset (money's worth) for the recipient, and without a recipient, a 'voucher' would lose its meaning. Therefore, in a case of a supplier issuing a voucher to a recipient of goods, on his making a purchase from the supplier, the voucher is not being viewed as an additional outcome of the supply made to the recipient. Rather, it is an instrument that can be used in place of money (or other consideration) which can be used on effecting yet another inward supply. E.g., coupons, tokens, promo-codes, etc. These are very commonly used synonyms and most of them are incorrectly used. By merely referring to any article as 'voucher' without showing that it satisfies the ingredients in the statutory definition does not attract the treatment applicable or the benefits available, in law. Crypto-articles are not 'vouchers'.

However, where the supply can be identifiable at the time of issue of voucher, the tax should be remitted for the month in which the voucher is issued, as if it were an advance received for a supply to be made at a future date.

Reference maybe had to the discussion in the context of money under section 2(75) about Payments and Settlement Systems Act, 2007 where RBI is authorized to issue pre-paid instruments (PPIs) apart from Indian legal tender to be used to settle obligations to pay consideration. All vouchers are not money if they are not so recognized by RBI. And if the vouchers are recognized by RBI then they will take the character of money.

Reference may be had to the detailed discussion in the context of time of supply under section 12(4)/13(4) for a detailed discussion on the types of vouchers and implications in GST.

(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

The expression 'works contract' is limited to contracts to do with immoveable property, unlike the erstwhile understanding of the phrase which also extends to moveable property. A contract

will amount to a 'works contract' only where the resultant is immovable property. Transactions resulting in movable property, however, would be treated as a 'composite supply' of goods or services depending on the principal supply. Refer analysis under section 8.

The 14 adjectives used in the definition of works contract are neither exhaustive nor limiting the scope of works contract. Conspicuous by their absence are adjectives like manufacture, assembly, printing and so on. As stated earlier the presence of certain objectives of the absence of certain others limit the scope of what works contract is under GST. If the resultant is bringing into existence of immovable property, then the supply is a works contract. Obviously, pre-existing immovable property being involved in a transaction will be saved to the extent of paragraph 5, schedule III. Refer detailed discuss about concept of immovable property along with services under section 2(102).

For GST law, works contract as defined above will be treated as a supply of service, thereby bringing debate to a close on the methodology of segregating the works contract between goods and services. Due to treatment as a supply of services, transactions such as sales returns, cancellation, non-approval of work done, carrying forward of work-in-progress, etc. are faced with restrictions in GST as no provision appears to be made to accommodate such transactions which are akin to goods even when works contracts are treated as supply of services.

Indivisible works cannot artificially be divided into supply of goods and supply of services, *simplicitor*. And unless the resultant installation constitutes 'immovable property', the supply cannot be treated as 'works contracts'. Use of cement concrete is not a necessary condition for the supply to be treated as 'works contracts' because wood or steel can also be used with suitable finishing works to erect a building or a structure. Supply that does not pass the test of 'immovable property' will not be works contracts and their categorization tested for being 'composite supply'.

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

Certain words and expressions like exports, import, etc. defined in the IGST/ UTGST/ Compensation laws as are used under the CGST law will have the same meaning as assigned in such laws.

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

[24] *Omitted vide by the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 w.e.f. 18-3-2020.*

Extract of the CGST Rules, 2017

2. Definitions

In these rules, unless the context otherwise requires,-

(a) "Act" means the Central Goods and Services Tax Act, 2017 (12 of 2017);

(b) "FORM" means a Form appended to these rules;

(c) "Section" means a section of the Act;

(d) "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(e) words and expressions used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

Chapter 2
Administration

3. Officers under this Act

4. Appointment of officers

5. Powers of officers

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

Statutory Provision

3. Officers under this Act

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely: —

(a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,

(b) Chief Commissioners of Central Tax or Directors General of Central Tax,

(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,

(d) Commissioners of Central Tax or Additional Directors General of Central Tax,

(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,

(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,

(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,

(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and

(i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

3.1 Introduction

The CGST Act confers powers for performing various statutory functions on various officers. Officers who are to discharge these functions derive their power and authority from section 3. It is therefore necessary for the efficient administration of the law that often Authority be conferred on designated persons who will be the incumbents occupying positions identified in the law as being the authorized persons to discharge the said functions.

3.2 Analysis

Specific categories of officers have been named in this section whose appointment requires notification by the Government. Notifications issued under this section do not require to be laid before Parliament as 'laying before Parliament' is a requirement limited only to exemption notifications and not designating officers under section 3. Central Excise Act had been amended perhaps to align itself in the administrative framework in view of the imminent introduction of GST. Accordingly, Officers under the Central Excise Act are deemed to be officers appointed under this act.

Also, Government has notified a post of Joint Commissioner (Appeals). This is significant because there are three ranks of officers of Central Tax who will operate as First Appellate Authority and pecuniary limits may be prescribed for each. Second Appellate Authority will continue to be the Tribunal.

Statutory Provision

4. Appointment of Officers

(1) The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

4.1 Introduction

All statutory functions cannot be performed by executive officers. There is a necessity to appoint administrative staff to assist executive officers.

4.2 Analysis

The power to appoint executive officers remains with the Government but the authority to appoint administrative staff is left to the Board – Central Board of Indirect Taxes and Customs constituted (erstwhile Central Board of Excise & Customs) under the Central Boards of Revenue Act, 1963. The administrative staff make up the entire working team of 'field formations'. While the authority to appoint administrative staff is vested with the Board, express provision is made to permit officers under section 3 to appoint, for the purposes of Central Tax, certain administrative staff.

This provision ensures an executive order issued by (say) Principal Chief Commissioner or Principal Director-General or any subordinate officer to immediately confer the status of administrative staff to the erstwhile field formations for the purposes of Central Tax.

Statutory Provision

5. Powers of Officers

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

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

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

5.1 Introduction

Delgatus potest non delegare – the delegate must exercise the power conferred and not sub-delegate. While this is true on the principle of construction of statutes, the very law that creates the power also empowers creation of exception to this principle.

5.2 Analysis

An officer duly appointed under this Act needs to be supplied with guidance as regards the manner of exercise of his authority including the boundaries for the same.

Apart from the boundaries laid down, very interestingly power of sub-delegation is conferred on officers of Central Tax. Please note in the event of sub-delegation, the duty to provide superintendence is implicit. While sub-delegation appears to subvert the course of administrative power, in the wisdom of the lawmaker the liberty to sub-delegate can at least be enabled in such a historical and hard-to-amend legislation. It would be interesting to see how this power would be exercised without causing too much dilution and subversion. All the administrative flexibility provided or at least enabled have been wisely limited to executive officers and not to appellate authorities.

It is also of interest to note that superior Officers can discharge duties assigned to subordinate officers. For this reason, taxpayers are welcome to include superior officers when any 'demand for justice' is being made before the Proper Officer for failure to operate within the limits of authority vested in various provisions.

Passion to protect interests of Revenue does not authorise the proper officer to bypass procedures laid down for the implementation of the law. Reference may be had to ICAI's Handbook on Inspection, Search, Seizure and Arrest to gain an insight into nature of these procedures and the rights that accrue to taxpayers when they are misapplied.

Statutory Provision

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

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

(2) Subject to the conditions specified in the notification issued under sub-section (1), —

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

6.1 Introduction

With the similarity of the taxing base, it is necessary to develop a mechanism to avoid duplication of tax administration by officers of Central Tax and by officers of State /UT Tax.

6.2 Analysis

For the purposes of administration of this Act, it is permitted to authorise officers of State/UT Tax to simultaneously also be the officer of Central Tax. It is interesting to note that officers of State/UT Tax do not relinquish their authority but accept additional authority as officers of Central Tax. However, to do so requires the recommendations of the Council and adherence to the conditions that the Government may impose in this regard.

In order to establish non-overlap of administrative power, it is provided that an officer in respect of central tax is required to duly exercise his authority even in respect of State/UT Tax where the executive action is in respect of the same taxing base. In so doing, the officer of central tax is required to intimate the officer of State/UT Tax in respect of all his actions. Further administrative power invoked by the officer of the State/UT Tax in any proceeding, will preclude officer of Central Tax from exercising any administrative power in respect of transactions covered by the said proceedings. Care must be taken not to bar Officers from prosecuting different transactions. E.g., State Tax Officer may undertake audit under

section 65 and at the same time, Central Tax Officer may initiate proceedings under section 67, both in respect of the same taxpayer. E.g. State Tax Officer may undertake inquiry in respect of supplies omitted to be reported causing evasion of tax and at the same time, Central Tax Officers may undertake inquiry in respect of inadmissible credits availed by the same taxpayer based on DGARM reports about involvement in fictitious supplies (also called 'circular trading'). It takes great discernment to locate overlap of the same occupied field by both departments. Merely because Officers from one department are 'engaged' with taxpayer in any proceedings, does not operate as a bar on Officers on the other department to 'engage' with the same taxpayer.

The officer who has exercised administrative power in any proceeding will continue to be the forum to entertain appeal, rectification or revision in respect of that matter until it is concluded. Surely, this will not result in competition for tax administration enable clear and unambiguous jurisdiction in respect of each proceeding. Industry will closely examine who will exercise administrative power without causing duplication in appearing before tax administration for GST compliance.

Please note that this provision enabling mutual allocation of administrative power between officers of central tax and officers of State/UT Tax opens with the words *"Without prejudice ….".* As such the provisions conferring power to officers of central tax will not be in derogation of the provisions enabling its mutual allocation. In other words, there may be duplication of powers in respect of same taxable persons or same issues involving said taxable persons but not simultaneous exercise of these powers over the same matter so as to cause parallel proceedings. The role of the Council in guiding such mutual allocation is paramount as also the conditions that the Government is authorised to impose in such an exercise.

It is very important to examine in every GST proceeding whether the officer initiating the said proceedings is vested with the authority so to do. It is not uncommon that officers are conferred the authority after they have initiated any proceedings. In such a situation, the entire proceedings become illegal and in certain cases cannot be restarted due to supervening circumstances or actions taken.

Acquiescence is an important topic to familiarize ourselves with. It is one where a person who may be aware or unaware of the lack of authority but submits to proceedings initiated and encourages Revenue to proceed with it, is treated to have acquiesced to those proceedings and is barred from objecting to it long after both sides have travelled down the path in those proceedings admitting that it to be legal and valid. Such acquiescence robs the right of the person to subsequently question the lack of authority. A hot contest is on the question of whether acquiescence can furnish legality to a patently illegal action. Tax administration will, however, claim it to be so. This itself requires a careful consideration of the scope of authority being exercised and it does good to raise objections on this issue, if it exists, at the earliest opportunity.

A wonderful instance is found in *Juhi Industries (P) Ltd. v. State of JH & Ors. WP(T) 1991/2021*, where notice was quashed even though taxpayer had acquiesced to proceedings

under replying to notice and even sought rectification under section 161. A word of caution, this decision did not make specific reference to section 160(2), but it must be considered that High Courts are not limited by statutory prescription when entertaining Petition under Article 226 and 227 and 'moulding relief' to avoid subversion of justice.

Please note the notifications and circulars (listed later) must be carefully studied to understand the scope and extent as well as limits to the powers conferred. The general rule in section 5(2) that – a superior Officer is empowered to exercise authority vested with the subordinate – does not hold good in all instances. The notification granting the said power must be examined if the powers are conferred on 'an Officer of certain rank' or 'Officers below the rank'.

The notifications under section 3 and 5 of the CGST Act (listed later) further detailed in the circulars specifying internal allocation of powers. There are yet other sections where the Officers are not notified such as Revisional Authority, Appellate Authority, etc. Care should be taken in considering the limits of authority vested under the Act so as not to contaminate proceedings undertaken in the absence of lawful authority.

Reference may be had to the table below to examine the scope and extent of delegation:

Notification No. (NN)	Issued under	Scope	Remarks
NN-2/2017-CT dt. 19.06.2017 (As amended by NN-79/2018-CT dt. 31.12.2018, NN-4/2019-CT dt. 29.01.2019 & NN- 51/2019-CT dt. 31.10.2019, NN-02/2021-CT dt.12.01.2021, NN-02/2022-CT dt. 11.03.2022 & NN-39/2023-CT dt. 17.08.2023)	Section 3 & 5 of CGST Act and section 3 of IGST Act	Appointment of Officers and vesting with powers of administration	Table I, II, III and IV provides the territory of administration, appellate and audit powers. Table V provides power to AC/JC of Central Tax for passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Service Tax Intelligence (DGGI).
NN-14/2017-CT dt.01.07.2017 (As amended by NN 1/2023-CT dt. 04.01.2023)	Section 3 & 5 of CGST Act and section 3 of IGST Act	Officers of DG-GST (Intelligence), DG-GST and DG-GST (Audit)	All-India jurisdiction
NN-39/2017-CT dt. 13.10.2017 (As amended by	Section 6(1) of CGST Act	Proper officer for section 54	Corresponding to jurisdiction of taxpayer

NN10/2018-CT dt. 23.01.2018)		and 55 of the CGST Act.	
NN-79/2018-CT dt.31.12.2018	Section 5(1) of CGST Act	Amended NN 2/2017-CT to empower Proper Officer to exercise powers under sections 73, 74, 75 and 76 of CGST Act.	Corresponding to the territory notified under NN-2/2017- CT dt. 19.06.2017.
NN-4/2019-CT dt.29.01.2019	Section 3 & 5 of CGST Act and section 3 of IGST Act	Amend NN 2/2017-CT to add 'Joint Commissioner of Central Tax (Appeal)'	Corresponding to the territory notified under NN-2/2017-CT dt. 19.06.2017.
NN-11/2017-IT dt. 13.10.2017 (As amended by NN-1/2018-IT dt. 23.01.2018)	Section 4 of IGST Act	Officers empowered to sanction refund under 54 and 55 of SGST Act / UTGST Act, to also sanction refunds under section 20 of IGST Act	Cross-empowerment of State / UT officers for purposes of IGST refunds
Circular 1/1/2017 dt.26.06.2017	Section 2(91) of CGST Act and section 20 of IGST Act	Declaration of Proper Officers under various provisions of the Act	
Circular 3/3/2017-GST dt. 5.07.2017 (As amended by 31/05/2018-GST dt. 09.02.2018)	Section 2(91) of CGST Act and section 20 of IGST Act	Declaration of Proper Officers under various provisions of the Act	
Circular 9/9/2017-GST dt. 18.10.2017	Section 2(91) of CGST Act and	Proper Officer for enrolling (and rejecting) of GSTP application	

	section 20 of IGST Act		
NN-05/2020-CT dt.13.01.2020	Section 2 & 5 of CGST Act	Authorising Revisional Authority	Principal Commissioner or Commissioner of CT for decisions or orders passed by Additional or Joint Commissioner of CT ; Additional or Joint Commissioner of CT for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of CT
Appointed common adjudicating authority: (i) The CBIC appointed common adjudicating authority in respect of show cause notices in favour of BSH Household Appliances Manufacturing (P) Ltd. *vide Notification No. 35/ 2023- Central Tax, dated 31.07.2023.* (ii) The CBIC appointed common adjudicating authority in respect of show cause notices in favour of United Spirits Ltd. *vide Notification No. 40/ 2023- Central Tax, dated 17.08.2023.* (iii) The CBIC appointed common adjudicating authority in respect of show cause notices in favour of Inkuat Infrasol (P) Ltd. *vide Notification No. 46/ 2023- Central Tax, dated 18.09.2023*			

Reference may also be had to *Circular 1053/2/2017-CX dated 10.03.2017 amended by Circular 1076/2/2020-CX dated 19.11.2020 and Circular 1079/3/2021-CX dated 11.11.2021* under the earlier law which lays down the entire jurisprudence on administrative discipline to be followed under carrying out administrative functions. Applicability of this Circular for GST purposes is affirmed in *NKAS Services (P) Ltd. v. State of JH & Ors. WP(T) 2444/2021*. Certain essential aspects of this administrative guidance are given in *Circular 31/5/2018-GST dated 09.02.2018* as amended by *Circular 169/1/2022-GST dated 12.03.2022*.

Administrative law states that no person is to be vested with unsupervised authority. All authority (for Executive action) flows from our Constitution. Parliament makes laws on topics permitted in the Constitution. No law can be contrary to our Constitution (*ultra vires*). Making laws is the exclusive domain of Parliament (and Legislative Assembly of States/UTs as permitted in our Constitution). Administering or carrying out those laws is the exclusive domain of Executive or Government of the day. Interpreting those laws is the exclusive domain of Judiciary.

Law includes substantive law as well as procedural law. Both need not be contained in the same statute. Delegation is permitted only if permitted in the Act itself. Delegation cannot be abdication of role of law-making. Delegation must only to carry out the purposes of the Act. Delegate (person to whom some authority is delegated) cannot exercise authority beyond the extent it is delegated. Delegation cannot be absolute and unguided. Delegation cannot also be unsupervised. Delegation itself must be 'with limits'. There is a path that the delegate must travel and carry out duties and any deviation will come in for censure. Delegatee (person to whom some authority is delegated) cannot alter the power while exercising said power. To locate any instance of breach or alteration of the delegated power, clarity as to be 'scope' and 'limits' of the power conferred in the statute must be clearly known. Some instances are:

Section	Who can act? *	What can be done?	What are limits?
61	Superintendent	Discrepancy in returns	Nothing beyond returns
63	AC / DC	Best judgement assessment	Use of estimates allowed without compulsion to be accurate in arriving at demand
73	Superintendent	Demand to (i) challenge taxpayer's interpretation of law or (ii) canvass an alternate interpretation to the given facts	Use of estimates barred and demands not involving 'special circumstances' in section 74
74	Superintendent	Demand to (i) challenge taxpayer's interpretation of law (ii) canvass an alternate interpretation to the given facts or (iii) evasion of tax	Use of estimates barred and demand involving 'special circumstances'
81	ADC / JC	Permission to 'charge or transfer' assets as not being with intention to defraud Revenue	Unlimited scope of enquiry to reach conclusion – charge or transfer not intended to defraud Revenue.

** Superior Officer can discharge duties assigned to subordinate Officer but not vice versa.*

Exercise of authority excessively as well as failure to exercise authority conferred are both illegal. And they come under judicial review. i.e., the Courts will interfere (not to interpret law but) to call public authority to answer for such excess or failure. Appealing before departmental authorities may not provide relief when the remedy itself lies outside the law (to quash the proceedings or question the authority exercised or failed to exercise) under which administrative departmental authorities are constituted. Refer detailed discussion on 'judicial review' in the discussion under section 63 on the remedies available from High Courts.

GST law knows no such thing as 'spot recovery', that is, recovery on the spot where the (alleged) deviation is noted. India follows the concept of 'rule of law' in our Constitution. No person can be judge, jury and executioner all by himself. It is for this reason that 'notice' is to be given to the taxable person clearly stating the 'charges'. There can be no approach based on an opinion that *"I feel you are liable to pay tax, so pay immediately"* approach, especially not in GST. All demands must follow the process of issuing notice under section 73 or 74 or 76. Only in exceptional cases, order of demand can be passed and that too has some remedy (see section 63 and 64).

Another remarkable provision is section 108 where orders passed by officer lower in rank than the Revisional Authority, in the 'interests of revenue' be overturned. This appears to be unwarranted interference by Executive Authorities to upset orders of a quasi-judicial Authority. The remedy of departmental appeal is anyway available under section 107 and 112.

An interesting provision is [1][section 151] which permits Commissioner, or any officer authorized to (i) direct any person (ii) to furnish information relating to 'any' matter (iii) within a certain time and (iv) in a certain form and (v) a certain manner. Experts opine that this is a good example of 'unguided authority' delegated by Legislature that is potentially capable of being exercised with unlimited authority and this makes the delegation 'arbitrary'. Reference may also be had to discussion under section 151. It is not necessary that there must be some action taken by the delegate for it to be 'arbitrary' when the provision stands without any guidance or limits or methods or structure. That is sufficient for the provision to be violative of the requirements of valid delegation by Legislature to the Executive. Also, it is important to note that such sweeping power is left in the hands of the Commissioner to ensure it is exercised with discretion. It is held *in Matajog Dobey v. HC Bhari AIR 1956 SC 44* where it is stated that *"A discretionary power is not necessarily a discriminatory power and abuse of power is not easily to be assumed where the discretion is vested in the Government and not in a minor official"*.

Reference to any good publication on 'administrative law' can provide much needed insight into nature of authority given under section 3 to 6 of CGST Act, manner prescribed in each section for its exercise and limits to such authority.

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[1] *Substituted vide The Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021. Applicable w.e.f. 01.01.2022.*

Chapter 3
Levy and Collection of Tax

Sections	Rules
7. Scope of supply	3. Intimation for composition levy
8. Tax liability on composite and mixed supplies	4. Effective date for composition levy
9. Levy and collection	5. Conditions and restrictions for composition levy
10. Composition levy	6. Validity of composition levy
11. Power to grant exemption from tax	7. Rate of tax of the composition levy

Statutory Provisions

7. Scope of supply

(1) For the purposes of this Act, the expression "supply" includes—

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

[1][(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; [2][and]

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[1] *Inserted w.r.e.f. 01.07.2017 vide The Finance Act, 2021 – Brought into force on 01.01.2022 vide Notf No. 39/ 2021-CT, dt. 21.12.2021.*

[2] *Inserted w.r.e.f. 01.07.2017 vide The CGST (Amendment) Act, 2018 – Notified through Notf No. 2/2019-CT dt. 29.01.2019. Brought into force on 01.02.2019.*

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; [3][***]

(d) [4][***]

[5][(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1), —

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

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

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

(3) Subject to the provisions of [6][sub-sections (1), (1A) and (2)], the Government may, on the recommendations 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.

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2. Supply of goods or services or both between related persons or between distinct

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[3] The word "and" omitted w.r.e.f. 01.07.2017 vide The Central Goods and Services Tax (Amendment) Act, 2018 – Brought into force on 01.02.2019

[4] The words and letters "the activities to be treated as supply of goods or supply of services as referred to in Schedule II" omitted w.r.e.f. 01.07.2017 vide The Central Goods and Services Tax (Amendment) Act, 2018 - Brought into force on 01.02.2019

[5] Inserted w.r.e.f. 01.07.2017 vide The Central Goods and Services Tax (Amendment) Act, 2018 - Brought into force on 01.02.2019

[6] Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.r.e.f. 01.07.2017 - Brought into force on 01.02.2019. Prior to substitution it read as sub-sections (1) and (2)"

persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

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. *Import of services by a [7][person] from a related person or from any of his other establishments outside India, in the course or furtherance of business*

SCHEDULE II

[See section 7]

ACTIVITIES OR [8][TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. *Transfer*

   (a) *any transfer of the title in goods is a supply of goods;*

   (b) *any transfer 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 shall 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*

   Any treatment or process which is applied to another person's goods is a supply of services.

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[7] *Substituted "taxable person" vide The Central Goods and Services Tax (Amendment) Act, 2018 through Notf No. 2/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019.*

[8] *Inserted vide The CGST (Amendment) Act, 2018 w.r.e.f. 01.07.2017 - Brought into force on 01.02.2019.*

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, [9][***], 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, [9][***], 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. Supply of services

The following shall be treated as supply of services, namely:—

(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 after its first occupation, whichever is earlier.

Explanation.— For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised 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

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[9] The words and letters "whether or not for a consideration" omitted w.r.e.f. 01.07.2017 vide The Finance Act, 2020 – Brought into force w.e.f. 01.01.2021 vide Notf No. 92/2020-CT dt. 22.12.2020.

(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 remodelling 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, up gradation, 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; and

(f) 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.

6. *Composite supply*

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) 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.

7. [10]*[****]*

SCHEDULE III

[See section 7]

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*

[10]*The words and letters "7.Supply of Goods.-The following shall be treated as supply of goods, namely:- Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration" omitted w.r.e.f. 01.07.2017 by The Finance Act, 2021 through Notf No. 39/ 2021-CT, dated 21.12.2021 – Brought into force on 01.01.2022.*

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 of funeral, burial, crematorium or mortuary including transportation of the deceased.*

5. *Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*

6. *Actionable claims, other than [11][specified actionable claims].*

7. *[12][13][Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.*

8. (a) *Supply of warehoused goods to any person before clearance for home consumption;*

(b) *Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]]*

[14][Explanation 1].—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

[15][Explanation 2.— For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962]

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[11]*Substituted vide CGST (Amendment) Act, 2023 dt. 18.08.2023 through Notf No. 48/2023-CT dt. 29.09.2023 w.e.f. 01.10.2023, before it was read as, "lottery, betting and gambling".*

[12]*Inserted w.r.e.f. 01.07.2017 vide the Finance Act, 2023, notified through Notf No. 28/2023- CT dt. 31.07.2023- Brought into force w.e.f. 01.10.2023. It has also been clarified that no refund shall be made of all the tax which has been collected but which would not have been so collected, had paragraph 7 and 8 of schedule III and explanation 2 thereof, been in force at all material times.*

[13]*Inserted vide The CGST (Amendment) Act, 2018, notified through Notification No. 02/2019- CT dt. 29.01.2019, w.e.f. 01.02.2019.*

[14]*Explanation re-numbered as Explanation-1 by The Central Goods and Services Tax (Amendment) Act, 2018, notified through Notification No. 02/2019- CT dt. 29.01.2019, w.e.f. 01.02.2019.*

Related provisions of the Statute

Sections/ Rules	Descriptions
Section 2(5)	Definition of 'Agent'
Section 2(17)	Definition of 'Business'
Section 2(31)	Definition of 'Consideration'
Section 2(88)	Definition of 'Principal'
Section 15	Value of Taxable Supply
Section 16	Eligibility and Conditions for taking Input Tax Credit
Section 25	Procedure for Registration
Chapter IV-Rules	Determination of Value of Supply

7.1 Introduction

The definition of the word 'supply' is inclusive, the legislature has carefully chosen not to use the word(s) such as "means", or "means and includes", "shall mean", or "shall include", etc. A careful consideration of the above explanation would indicate that the draftsmen were cautious about any transaction of supply that might escape the levy. It is for this reason that despite being exhaustive, the legislature has used the word "includes".

A plain reading of the definition of the word 'supply' contained in section 7(1) would invite anybody's attention to the 8 words – sale, transfer, barter, exchange, license, rental, lease or disposal. Look at these 8 words – they are arranged in descending order. Words 2 to 8 were a subject matter of challenge under the erstwhile State-level VAT Laws. This ambiguity has been done away within the GST Laws. These 8 words together form a 'continuum'. The last 7 words taper-off in their absoluteness starting from the first of the forms of supply, that is, 'sale'. It is important to note that *ejusdem generis* as a rule of statutory construction cannot be employed while considering these 8 forms since there are no generic words that follow these specific words. However, the words 'such as' permits sub species of these 8 forms to be taxed such as sub-lease, sub-license, sub-contract, etc., as these are not a form of supply and not listed in the provision but merely involving different persons compared to the primary lease, license, etc.

The Model GST Law released in June, 2016 had included the meaning of the term 'supply' within the clauses of the definition section. However, in GST law, the term 'supply' is defined by way of a separate and distinct Section. One understands that the meaning attributed to the

[15] *Inserted vide The CGST (Amendment) Act, 2018, notified through Notf No. 02/2019- CT dt. 29.01.2019, w.e.f. 01.02.2019. Effective retrospectively w.e.f. 01.07.2017 vide the Finance Act, 2023 dt. 31.03.2023, notified through Notf No. 28/2023-CT dt. 31.07.2023- Brought into force w.e.f. 01.10.2023.*

term "supply" is of very wide amplitude, but yet, an inclusive one. It must be noted that this term is ordinarily attributable to an 'outward supply', unless the context so requires that the term refers to an inward supply – say, in case of importation of services or in respect of transactions without consideration etc. Many things come within the scope of 'supply' but not everything is 'supply'. Supply too has boundaries and many transactions are excluded from its grasp. This points to a clear understanding that the expression 'supply', although inclusively defined, does have a recipe or a set of ingredients that each transaction must be tested against to see if it is or is not a 'supply'.

The word 'supply' could be understood as actual or implied. Implied supplies are governed by the relevant Schedule. The three pillars of a supply would be:

(a) subject–viz. goods, services or goods treated as services. One cannot find an instance in the GST statute where a supply of services is treated as a supply of goods.

(b) place of supply–to identify whether the transaction is an inter-State supply or an intra-State supply

(c) time of supply–where legislature specifies 'when' the tax incidence is attracted.

7.2 Analysis

Supply:

(a) Generic meaning of 'supply': Supply includes all forms of supply (goods and/ or services) and includes agreeing to supply when the supply is for a consideration and in the course or furtherance of business (as defined under section 7 of the Act). It specifically provides for the inclusion of the following 8 classes of transactions:

(i) Sale

(ii) Transfer

(iii) Barter

(iv) Exchange

(v) License

(vi) Rental

(vii) Lease

(viii) Disposal

The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions. There are various ingredients that differentiate each of these eight forms of supply. On a careful consideration of the purposeful usage of these eight adjectives to enlist them as 'forms' of supply, it becomes clear that the legislature makes its intention known by the choice of words that are deliberate and unambiguous. However, the

definition starts off with the phrase–"For the purpose of this Act", which means that wherever the term supply has been used anywhere in the Act, the meaning should always be derived from this section 7 and cannot be substituted by any other understanding of the term supply.

Barter means a "thing or commodity" given 'in return of' another. In other words, no value is fixed-viz., barter of wrist watch with a wall clock.

Disposal means distribution, transferring to new hands, extinguishment of control over, forfeit or pass over control to another but in respect of goods that are 'unfit for sale'. Surely, discounted sale is not called disposal if the articles are still 'fit for sale'.

Transfer means to pass over, convey, relinquishment of a right, abandonment of a claim, alienate, each or any of the above acts, lawfully.

An attempt at identifying the characteristics of each of these forms of supply is provided below:

Forms of Supply	Two Capable Persons	Consideration in Money (Price)	Willingness to Contract		Delivery of Possession	Permanent alienation	Object of Supply			
			Seller	Buyer			Consensus	Identity of Object		
								Services	Movable	Immovable
Sale	✓	✓	✓	✓	✓	✓	✓	×	✓	NA
Transfer	✓	✓	×	✓	✓	✓	✓	×	✓	✓
Barter	✓	×	✓	✓	✓	✓	✓	✓	✓	×
Exchange	✓	×	✓	✓	✓	✓	✓	×	×	✓
License	✓	✓/×	✓	✓	×	×	✓	✓	✓	✓
Rental	✓	✓/×	✓	✓	✓	×	✓	×	✓	×
Lease	✓	✓/×	✓	✓	✓	×	✓	×	✓/×	✓
Disposal	✓	✓	✓	×/✓	✓	✓	×	×/✓	✓	×

On an understanding of the above chart, one may infer that 'supply' is not a boundless word of uncertain meaning. The inclusive part of the opening words in this clause may be understood to include everything that supply is generally understood to be plus the ones that are enlisted. It must be admitted that the general understanding of the word 'supply' is an amalgam of these 8 forms of supply.

Please follow the brief discussion of the 8 forms of supply:

- Sale is a lawful, permanent and absolute transfer of ownership of property in goods for money consideration under a valid contract such that no rights are left behind with the transferor;
- Transfer is to lawfully convey property from one person to another. Here, consent of transferor and capacity of transferee need not be present although all other ingredients of a lawful contract are incumbent;
- Barter is where the consideration is in the form of goods or services (and not in money) for a sale or transfer. So, in general, barter in itself is not a supply but the form that consideration takes. But, when barter is called one of the forms of supply, it covers other forms of supply whose consideration is non-monetary. Therefore, barter will involve two supplies and not one. Each of these supplies would need to be examined for its respective taxability;

- Exchange is where consideration is still not in money but in form of immovable property (*CIT v. Motors and General Stores (P) Ltd. AIR 1968 SC 200*). Similar to barter, exchange also involves two supplies. Given that land and (completed) building is excluded from supply, exchange would be the supply whose consideration is immovable property. And the object of supply itself may be of goods or of services;
- Lease is where possession is transferred along with the right to use immovable property with a duty to care, protect and return subject to normal wear and tear along with consideration in the form of non-recurring premium only or along with recurring rent. Essence of lease being delivery of possession along with user rights is the reason lease is also used in the context of movable property (under the earlier laws). Supplier of a lease does not have possession, hence does not enjoy the right to use but retains right to repossess after term of lease. Lease is discussed first to contrast it with rental and license;
- License is similar to lease except that possession is not transferred but mere permission to enter and use the property (movable or immovable) is allowed along with all other ingredients of a lease. Supplier of a license retains possession of the property during the term of license without right to use (if license precludes joint use). And after expiry of the term of license or on termination of license, the licensee will be a trespasser;
- Rental is lease in respect of movable property. And since recurring payment in lease (of immovable property) is called rental, transfer of possession with user rights for recurring payment of consideration is interchangeably applied for movable and immovable property; and
- Disposal is sale or transfer but property that does not possess merchantable warranty. Articles that are not merchantable are not 'fit for sale' but trade does take place for the reason that the supplier disposes the article without ascribing any worth but the recipient accepts the article for some intrinsic worth that he is able to extract or obtain. Article that does not answer to its description cannot normally bring a valid contract into existence but due to the respective motivation of each party, such articles are lawfully disposed off. In other words, although there is no consensus as to the object of supply, the parties are consenting to enter into such a contract for the respective reasons and considerations.

Any attempt at expanding this list of 8 forms of supply, in case of goods, must be attempted with great caution. Attempting to find other forms of supply in the normal course did not yield the desired results. However, transactions that do not amount to supply have been discovered viz., transactions in the nature of an assignment where one person steps into the shoes of another, appears to slip away from the scope of supply, as well as transactions where goods are destroyed without a transfer of any kind taking place. Perhaps, the case of destruction of goods is not included within the

meaning of 'supply' considering that the input tax credit in respect of destroyed goods is a blocked credit. However, the contradiction may continue until a clarification is issued to state whether the blocked credits is in respect of goods that have been destroyed before taking such credits or is applicable even in case where goods are destroyed after the credits have been availed in respect of such goods.

Now looking at 'services', we find that the adjectives used to list the 8 forms of supply in this clause are akin to transactions involving goods and not services. Services other than licensing, rental and leasing services have not been specifically included in the meaning of the term 'supply'. However, transactions involving services are also required to be passed through the same criteria for determination of supply. In doing so, a slight adjustment in the way of looking at transactions involving services is necessary so as to substitute the object of supply from goods to services while administering the tests for determining the forms of supply involving services. In other words, the same 8 forms of supply must be applied in relation to services but with adjustment that is understood by the expression *mutatis mutandis.*

The law has provided an inclusive meaning to the word 'supply' which implies that the specific transactions which are listed in the said section are only illustrative.

It is essential that such supplies should be by the supplier who is engaged in business [(refer discussion under section 2(17)]. However, in case of import of services for a consideration, even if, such services are imported otherwise than in the course or furtherance of business, it would still be a supply. Refer discussion on inward supply in section 2(67) and compare it with outward supply in section 2(83).

The word 'supply' should be understood as follows:

- It should involve delivery of goods and/ or services to another person; the word 'delivery' must be understood from allied laws such as Sale of Goods Act, 1930 or Indian Contract Act, 1872; delivery could be actual, physical, constructive, deemed, etc.
- Supply will be treated as 'wholly one supply'–if the goods and/ or services supplied are listed in Schedule II or could be classified as a composite supply or mixed supply.
- It should involve *quid-pro-quo*–viz., the supply transaction requires something in return, which the person supplying will obtain, which may be in money/ monetary terms/ in any other form (except in cases of activities specified in Schedule I which are deemed to be supplies, even when made without consideration). What is received in return need not be always in 'money'; it can partly/ wholly be in money's worth too (non-monetary in nature);
- Transfer of property in goods from the supplier to recipient is not necessary viz., lease or hiring of goods.

(b) It is essential that all the above forms of transactions including the extended and generic meaning given to the word 'supply' should be made for a 'consideration'. The only exception for this rule of construction will be cases specified in Schedule I. Absence of consideration [(as defined in section 2(31)] will take away the character from the word 'supply' under this clause, and accordingly, the transaction will not attract tax. It is important to note that supplies listed in Schedule I, would nevertheless attract the wrath of tax, even when made without consideration. One has to, therefore, be very careful, while analysing the tax implications in respect of supplies listed in Schedule I. **Supply should be in the course or furtherance of business:** For a transaction to qualify as 'supply', it is essential that the same is 'in the course' or 'furtherance of business'. This implies that only such supplies of goods and/ or services by a business entity would be liable to tax, which are 'in the course' or 'furtherance of business'. Supplies that are not in the course of business or in furtherance of business will not qualify as 'supply' for the purpose of levy of tax, except in case of import of service for consideration, where the service is treated as a supply, even if, it is not made in the course or furtherance of business.

The expression 'in the course of' must be construed differently from 'in the course or'. The GST Laws uses the expression 'in the course or' and careful analysis is, therefore, essential. The expression 'in the course' appearing in section 7(1)(a) does not appear in section 7(1)(b). However, one cannot lose sight of the fact that the expression 'in the course' is used selectively in respect of transactions listed in Schedules I, II or III. The import of this would mean that the meaning attributable to the expression 'in the course' would apply only in respect of those transactions, so listed, in the relevant Schedules.

Let us now try to understand the meaning of the phrase 'in the course'. The expression 'in the course' implies not only a period of time during which the movement or transaction is in progress but postulates a connected relationship. Therefore, the class of transactions need to be analysed and cannot be randomly applied to the provisions of section 7 or section 8. So construed, the word 'or' appearing in the phrase or expression 'in the course **or** furtherance of business' assumes importance. When read in a proper perspective, the preposition 'or' actually bisects the entire phrase into two limbs. Therefore, the 8 forms of supply would tantamount to transaction of supply when such supplies are in the *course of business*, or in the *furtherance of business*. Therefore, the legislature has supplied huge amount of elasticity in understanding the meaning of the term 'supply'.

The term 'business' has been defined under the GST Laws to include:

(i) a wide range of activities (being "trade, commerce, manufacture, profession, vocation, adventure, wager or any similar activity")

(ii) "whether or not it is for a pecuniary benefit"

(iii) regardless of the "volume, frequency, continuity or regularity" of the activity

(iv) and those "in connection with or incidental or ancillary to" such activities.

A question came up before ***Authority for Advance Ruling – Karnataka*** in the matter of ***Columbia Asia***, whether allocation of expenses to other registered units by Corporate Office tantamount to supply of services between related or distinct persons as per para-2 of schedule I to CGST Act and accordingly liable to tax. The Authority ruled that the activities performed by the employees at the Corporate Office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other States as well, i.e., distinct persons as per section 25(4) of the CGST Act shall be treated as supply as per Para-2 of Schedule I of the CGST Act. It is known to all that a corporate body being a separate legal entity, its head office can also be treated as a branch. It is interesting that CBIC has issued *Circular 199/11/2023-GST dated 17.07.2023* highlights the following points:

a. inter-branch transactions are real and liable to be taxed without requirement of any flow of consideration from destination-branch to originating-branch of such supplies.

b. originating branch is permitted to avail and utilize input tax credit when discharging output tax in respect of such inter-branch transactions.

c. exclusion from tax is permitted to originating-branch only if such tax, if charged, were to be fully creditable in destination-branch.

d. exclusion to originating-branch from paying output tax on inter-branch transactions becomes inapplicable if such tax is not fully or partially creditable in destination-branch.

e. originating branch claiming full input tax credit but not paying output tax on account of this exclusion may be answerable for reversal of such credit since exclusion from paying output tax implies admission of outward supply for a taxable value of Rs. Nil.

Further, inter-branch transactions are taxable when destination-branches are located outside India and also when related persons (not being mere distinct persons) located in India are involved.

Identifying inter-branch transactions that command this treatment, is not simple. While supply must be real to be subject to tax, absence of consideration alone is furnished by fiction in schedule I. Artificial supplies cannot be imagined based on benefits enjoyed by destination-branches (or related persons). GST is imposed on transaction value, i.e., unique facts of each case affects the extent of GST chargeable in each case. GST does not authorize normalizing the taxable value. That concept existed in Central Excise but was let go of in 2014 itself when normal transaction value was replaced with transaction value. It is seen that every benefit enjoyed by a branch feeds an inquiry into the source of such benefit – an originating-branch (or related person) – to impute supply. Non-existent supply cannot be forced into a business based on flow of benefits without a real supply. GST is a tax on supply and not a tax on benefits. GST is a tax on actual price (of each supply) and not a tax on comparable price. Refer additional discussion under section 7(1)(c) below.

(c) Activities or transactions by a person other than an individual to its members or constituents or *vice versa*, for cash, deferred payment or other valuable consideration:

Clause (aa) in sub-section (1) of Section 7 of the CGST Act was inserted, retrospectively with effect from the 1st July, 2017 *vide The Finance Act, 2021*. This amendment has been notified on 1st January 2022 *vide Notification No. 39/2021-Central Tax dated 21.12.2021.* The purpose for the amendment was tabled at the 39th Meeting of the GST Council in the light of the Hon'ble Supreme Court judgement in the case of *State of West Bengal v. Calcutta Club Limited [2019 (29) G.S.T.L. 545 (S.C.)]* and *CCCE & ST & Ors. v. Ranchi Club Limited [2019-VIL-34-SC-ST]*. Considering the implications in the GST regime, it has been ensured to levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

For understanding the aforesaid clause, let us understand the following ingredients:

Activities or transactions – seems not limited by "sale, transfer, barter….." but every activity or transaction is covered.

Other than an individual – covers all forms of organizations including HUF, partnership firms, societies, trusts, association of persons, body of individuals and companies.

Further, an explanation has also been inserted to state that the members or constituents shall be deemed to be two separate persons notwithstanding anything contained in any other law for the time being in force or any judgement, decree or order of any Court, Tribunal or Authority.

As inferred from above, the scope of supply is expanded as now services rendered by a club, association, society, or any such body (for a subscription or any other consideration) to its members constitute supply and are exigible to GST.

Further it is pertinent to mention that an important relief is provided to RWA / CHS under entry no. 77 of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*, as amended, which provides an exemption in respect of service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution for-

(i) the provision of carrying out any activity which is exempt from the levy of GST (e.g., recovery from members for electricity charges and statutory dues levied on the RWA or CHS as a whole); or

(ii) sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex, up to Rs. 7,500 per month per member

The exemption under clause (i) is in addition to the exemption referred to in clause (ii).

These exemptions, particularly one up to Rs. 7,500 per month per member is a major relief for RWA or CHS. The point to note is that this exemption is restricted to sourcing of goods or services from a third person for the common use of its members such as provision of security, conservancy, maintenance of common property and facilities etc. and not to facilities and services provided by the RWA or CHS to its members on chargeable basis such as supply of electricity by DG sets, use of Society Hall on rental basis, paid parking space, penalty for delayed payment of charges etc.

An issue related to the above exemption - If the contribution per month per member exceeds ₹7,500/-, is the entire amount exigible for tax or it is the excess over ₹7,500/- that will be exigible? There are contrary views on this. In CBIC *Circular No.109/28/2019-GST, dated 22.07.2019*, view has been expressed that "in case the charges exceed ₹ 7,500 per month per member, the entire amount would be taxable". In other words, this Circular provides that the limit in entry 77(c) of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017* is NOT slab-based but absolute. i.e., if maintenance charges are 9,000/- then GST will apply on ₹9,000 and not ₹2,500 (9,000-7,500) over and above ₹7,500/. However, this part of the Circular has been quashed by the Hon'ble Madras High Court in *Greenwood Owners Association & Ors. v. UoI that on 01.07.2021 [2021 (55) G.S.T.L. 529 (HC Mad.)]* as "contrary to the express language of the entry in question", the Court held that the term 'upto' connotes an upper limit and means that any amount till the ceiling of ₹ 7,500 would be exempt for the purposes of GST, that is, it is only the excess over ₹ 7,500 which will be liable to tax.

This decision was appealed before the Division Bench of Hon'ble Madras High Court by the Department. The Division Bench has stayed the decision of the Single Bench with respect to the quashing of the Circular and posted the matter for further hearing i.e., still pending.

Another interesting aspect if that with the retrospective introduction of section 7(1)(aa), it is an affirmation that GST would otherwise not be payable by such clubs and associations. And when this provision came to be notified from 01.01.2022, taxpayers (clubs and associations) could not be denied input tax credits, even though there is no saving clause in section 16(4) to save these taxpayers from a double burden – retrospective output tax without input tax credit. Refer further discussions under section 16(4) later. Such taxpayers (clubs and associations) would be liable to discharge output tax on 20.02.2022 not just for the period from 01.01.2022 but from 01.07.2017 up to 31.01.2022 (55 months).

(d) Import of service will be taxable in the hands of the recipient (importer): The word 'supply' includes import of a service, made for a consideration [(as defined in Section 2(31)] and whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would qualify as 'supply' and, therefore, would be liable to tax. This would not be subject to the threshold limit for

registration, as tax would be payable in case of import of services on reverse charge basis, requiring the importer of service to compulsorily obtain registration in terms of section 24(iii) of the Act. Although, import for personal purposes is included in the definition of supply, entry 10(a) to *Notification No. 9/2017-Integrated Tax (Rate) dated 28.6.2017*, exempts import of services under entire Chapter 99 from payment of GST. However, the GST law has ensured that persons who are ***not*** engaged in any business activities will not be required to obtain registration and pay tax under reverse charge mechanism, and in turn, requires the supplier of services located outside India, to obtain registration for the OIDAR (Online Information and Database Access and Retrieval) services only.

Note: Import of services is included within the meaning of 'supply' under the CGST/ SGST Acts. However, it would be liable to IGST since it would not be an intra-State supply. In fact, section 2(21) of IGST Act has adopted the meaning of 'supply' from CGST/ SGST Acts.

(e) Transactions without consideration: The law lists down, exhaustively, cases where a transaction shall be treated as a 'supply' even though there is no consideration. Such transactions are listed in Schedule I. Once an activity is deemed to be a 'supply' under Schedule I, the value of taxable supply shall be determined in terms of provisions of section 15(4) of the Act read with Chapter IV (Determination of Value of Supply) of CGST Rules.

In this regard, it may be noted that on careful consideration of the essential ingredients of a valid contract, it cannot be disputed that a contract without consideration is not a contract at all. The reference made to 'transactions without consideration' in Schedule I does not imply that a void contract is being made valid, by GST laws. It must be understood that transactions that otherwise bear all the indicia of a valid contract but not so due to absence of consideration, such absence is furnished by legal fiction. Notice the instances that are covered by this legal fiction – transactions *inter se* branches of same legal entity, principal and agent – are good examples to show the limited purposes that this legal fiction serves. Even though they are not contracts, but by legal fiction, flowing from section 7(1)(c) read with Schedule I, they will be nevertheless regarded as a 'supply' and made taxable. As can be seen from the above, in all other clauses of section 7(1), supply exists only when a valid contract subsists, but in these select circumstances, supply is imputed by legal fiction in the absence of a contract. It is, therefore, important not to extrapolate this legal fiction beyond the specific cases to which the law imputes this fiction.

The activities specified in Schedule I are analysed in the ensuing paragraphs:

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

(a) Of the 8 forms of supply, the only forms that qualify as a supply, under this category are 'transfer' and 'disposal'. Other 6 forms of supply listed in

Section 7(1)(a) would not stand categorised in this paragraph, given that there is (a) an element of a consideration that is intrinsic to the form, such as the case of a sale or barter or exchange, or (b) there is no business asset that is permanently transferred such as in the case of a licence or rental or lease, or any other service for that matter.

(b) Ordinarily, there can be no permanent transfer in case of goods sent for job work. The aspect of sending goods on job work is not a supply, as clarified *vide Circular No. 38/12/2018, dated 26.03.2018*. However, where a registered person has purchased any moulds, tools, etc. and has sent the same to the job worker, there is a good chance that the goods are never returned, given that the time limits specified in section 143 for goods sent for job work does not apply to moulds, tools and other specified goods.

(c) In the above context, business asset need not always be goods, it can as well be service that could be permanently transferred which could attract the above provisions. E.g., unexpired right in a business franchise permanently transferred to another person. Assignment of benefits left to be enjoyed in an executed contract is not a case of transfer of business assets. But assignment for a consideration is a supply in the nature of tolerating an act or situation.

(d) While the word 'transfer' in this entry suggests that there should be another person who would receive the business assets, there is no requirement of another person in the case of 'disposal'. Therefore, if a business asset on which credit is claimed has been discarded, the transaction shall be regarded as a supply.

(e) Business assets procured for the purpose of serving the requirements of 'Corporate Social Responsibility', being a statutorily imposed obligation' may be contended to be a procurement made in the course or furtherance of business. However, there would be no escape from the levy of tax on the transaction, if the asset is permanently transferred. The treatment would be no different even in the case of a donation. But amendment in section 17(5)(fa) must be given due consideration while examining certain CSR activities.

(f) Tax treatment attendant to permanent transfer (or disposal) of business assets applies to pre-GST business assets too. It is for this reason that in case of motor vehicles, *Notification No. 20/2018-Central Tax (Rate) dated 25 Jan 2018* gives some relief on their transfer to allow 'margin method' with full exemption of cess by notification 1/2018-Cess dated 25 Jan 2018.

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both

(a) The deemed supplies covered in this paragraph are based on a relationship between the supplier and recipient. The relationship covered under this paragraph as related persons defined by way of an explanation to section 15 and distinct persons in terms of section 25(4) and 25(5) of the Act.

(b) Transactions with distinct persons are normally without consideration since they are part of the same entity located in different geographies, unless the accounting system is so sophisticated or so devised, that it treats the locations in each State as a separate/ independent entity, even for book-keeping purposes and effects payments in monetary terms. Let us take instances of transactions between distinct persons that are not traceable in the books of account, but requires attention from the perspective of this paragraph in the Schedule:

(i) Stock transfers e.g., transfer of sub-assemblies, semi-finished goods or finished goods.

(ii) Transfer of new or used capital goods/ fixed assets–including movement of laptops when employees are transferred from one location to another.

(iii) Bill-to ship-to transactions wherein the vendor issues the invoice to the corporate office and ships the goods to the branch office.

(iv) Centralised management function like Board of Directors, Finance, Accounts, HR, Legal, Procurement Functions and Other Corporate Functions at one location say Corporate Office and the entity having multiple registrations in various States results in supply of Management Services by the Corporate Office to distinct persons;

(v) A head office may not be supplying services to its branch offices, if these branches are implementation sites for the project secured by head office. No two identical contracts are required to be implemented in exactly the same manner;

(vi) A transaction of sale of goods from one registration and providing after sales support or warranty services/ replacement services by another registration of the same entity;

(vii) Contractor registered in one State moving machinery for use in project secured by branch in another State when project execution is without recourse to former State;

(viii) Contract awarded by a customer to an entity at the corporate office from where the centralized billing to the customer is made but the execution of the contract is carried out through various registrations of the same entity located in other/ multiple States.

(ix) Permitting employees to make use of the office assets for personal use – say usage of motor vehicles, laptops, printers, scanners, etc.

(c) This paragraph is independent of the scope of paragraph 1. A transaction involving business asset permanently transferred to a distinct person, would fall outside the scope of paragraph 1, but would still be liable to be treated as a supply in terms of this paragraph. The provisions would equally apply even in the case of assets procured in the pre-GST regime. Please note that a transaction that is already a 'supply' is now furnished a special treatment by the fiction in Schedule I in this paragraph and in the next unlike paragraph 1 (which was not a supply but is deemed to be one by this fiction).

(d) The explanation appended to section 15 of the CGST Act provides that an employer and employee will be deemed to be "related persons". Accordingly, supplies by employer to employees would be liable to tax, if made in the course or furtherance of business, even though these supplies are made without consideration, except:

(i) Gifts by an employer to an employee of value up to Rs 50,000 (to be understood as inclusive of taxes, as read with Rule 35 of the CGST Rules) in a financial year (whether this value needs to be pro-rated in the first year of implementation of GST/ first year of commencement of business is a moot question; however, the presumption is that a part of the financial year would be construed as a whole year).

(ii) Cash gifts of any value, given that the 'transaction in money' is not a subject matter of supply as the same receives treatment as a taxable salary in the hands of the employee.

(iii) Services by employee to the employer in the course of or in relation to his employment–treated as neither a supply of goods nor a supply of services.

(e) It is interesting contradiction that where gifts are given by the employer to the employee in excess of Rs. 5,000, income-tax law treats the same as emoluments in the course of employment attracting income tax. Care must be taken to ensure that divergent tax treatment of common facts is not applied in different laws.

(f) Transfer of business assets of employer to employee when it is nearing end-of-life must be examined whether it would be (i) disposal of business assets (ii) gifts or (iii) supply. Where there is some reasonable residual useful life, then employer giving away such business assets to employees at written down value would be supply (and not the other two possibilities) and would attract the incidence of tax.

(g) Where business assets are given to employees at 'nominal value', the existence of relationship would attract valuation at Open Market Value (OMV), if it is a supply.

(h) The question that arises as to what constitutes a gift is discussed in the following paras:

(i) Gift has not been defined in the GST laws.

(ii) In common parlance, gift when made without consideration is voluntary in nature and is normally made occasionally.

(iii) It cannot be demanded as a matter of right by the employee and the employee cannot move to a Court of law for obtaining a gift. However, if any gift, by whatever name called, is a right of the employee in terms of the employment contract/ employee policy of the entity, then such gift shall be treated as emoluments arising out of the employment (including perquisites) and cannot be treated as a supply.

It is apposite to mention here the clarification on perquisite issued by *CBIC vide Circular No.172/04/2022-GST, dated 6.07.2022*. The relevant extract of which is as under:

Perquisites provided by employer to the employees as per contractual agreement		
S No.	***Issue***	***Clarification***
5.	*Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?*	*1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.*

		2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

(iv) As a corollary, one can argue that the scope and ambit of the word 'supply' also includes a transaction of a barter/ exchange, in which case, the transaction may be regarded a taxable supply. In such a case, the question that would arise is whether a salary paid in non-monetary terms will attract GST. However, the CGST Act contains a dedicated valuation rule (rule 27) which contains the *modus operandi* to arrive at the value of the supply, the consideration of which is made either wholly or partly in non-monetary terms.

(v) The credit restriction on membership of a club, health and fitness centre [under section 17(5)(b)(ii)] would not apply where the employer provides the facilities to its employees, whether or not for a consideration, given that such a supply without consideration, would also be deemed to be an outward supply under this paragraph of the Schedule.

(vi) Where gifts are liable to tax under this Schedule, it would be fair and proper to treat such gifts as taxable outward supplies, and therefore, credit thereon may not be required to be restricted under Section 17(5)(h).

(vii) It may also be noted that a gift need not always be in terms of goods. A service can also constitute a gift, such as gift vouchers for a beauty treatment.

(viii) Another question which arises that is on what value will the GST liability be calculated in case the gift amount exceeds Rs.50,000/-. Although it is not expressly mentioned in the CGST Act, but a reasonable construction can be drawn that GST shall be levied on the whole amount in case the gift amount exceeds Rs. 50,000/-.

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.

(a) It is of utmost importance to note that this paragraph substitutes actual relationship of Principal-Agent with Buyer-Seller and accordingly, tax on such buyer-seller to be applied. In the books of, say, the Agent, revenue by way of fee or commission will be recognized for GST purposes, turnover of sale with credit on purchases will have to be reported. Key is to locate Reseller-Agent and Agent *simplicitor** because compulsory registration will apply to former and not the latter.

*"Agent simplicitor" is a simple or straightforward agent. This might be an entity or individual that acts as an agent without the additional aspect of reselling products or services.

(b) The definition of the terms 'agent' and 'principal 'have to be understood contextually and have been reproduced below:

- Section 2(5) of the Act – "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.
- Section 2(88) of the Act – "principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

(c) Where an Agent receives goods directly from the Principal or if the Principal's vendor directly dispatches goods to the location of the agent, the Principal shall be required to treat the movement as an outward supply of goods by virtue of this clause. If understood in its proper perspective, when an agent receives goods on behalf of the Principal and thereafter issues the goods to the Principal, the transaction will be regarded as a supply by the Agent to the Principal.

(d) An important question that may arise here is - as to how the transaction would appear to the ultimate recipient of a supply, when affected by the Principal through the Agent, or to the supplier who effects the supply to the Principal through an Agent.

(e) There are two Circulars issued clarifying scope of transactions between Principal and Agent which clarifies the above aspects:

(i) *Circular No. 57/31/2018-GST, dated 4.09.2018* (in the context of scope of principal-agent relationship). The entire jurisprudence under Indian Contract Act,1872 has been brought to bear in GST by making reference to section 182 thereof and states as:

"Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said paragraph. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said paragraph. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal".

There are various scenarios which are discussed to analyse and conclude the scope of this paragraph in Schedule I. One interesting aspect to highlight in this Circular is that 'whether the agent is required to issue invoice to customer in his own name or in the name of the Principal' is a question that must be determined by the flow of transactions and not left flexible in the hands of the agent. But this Circular appears to wait upon the agent to confirm who will issue the invoice. This aspect can cause great concern because a C&F agent who handles the goods–receive, store and dispatch–on the Principal, may pay GST on commission and later it might be imposed on this agent to pay tax 'as if' this entire arrangement were a 'trading transaction' by fiction in Para 3 of Schedule I. At that time, things would have already concluded and irreversible.

Experts hold the view that 'if agent handles the goods belonging to Principal', this fiction applies and even though commission earned would be income for income-tax purposes, GST requires total turnover to be treated as outward supply with credit for inward supplies from Principal. If the agent does not handle the goods but merely introduces buyer and seller, this fiction would not apply. Yet another

category would be the case of Customs Broker who handles the goods not for making further supplies of such goods but to clear them with customs for import or export.

(ii) *Circular No. 73/47/2018-GST, dated 5.11.2018* (in the context of del-credere agent or DCA) states as:

Sl. No.	***Issue***	***Clarification***
1.	*Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?*	*As already clarified vide Circular No. 57/31/2018-GST dated 4th September, 2018, whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios:* • *In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.* • *In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.*
2.	*Whether the temporary short-term transaction-based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the*	*In such a scenario following activities are taking place:* *1. Supply of goods from supplier (principal) to recipient;* *2. Supply of agency services from DCA to the supplier or the recipient or both;* *3. Supply of extension of loan services by the DCA to the recipient.* *It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction-based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal-to-Principal basis and is an independent supply.* *Therefore, the interest being charged*

	CGST Act?	*by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide NN-12/ 2017-Central Tax (Rate,) dated 28th June, 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.*
3.	*Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?*	*In such a scenario following activities are taking place: 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient.* *It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction-based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.* *It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per clause (d) of sub-section (2) of section 15 of the CGST Act.*

(iii) As per *Notification No. 15/2018- Central Tax (Rate), dated 26.07.2018, the* services supplied by Direct Selling Agents (Other than Body Corporate, Partnership or LLP) to Bank or NBFC shall be covered under Reverse Charge.

(f) It would be remarkable if an Agent *simplicitor* who did not claim input tax credit is actual found to be a Reseller-Agent who ought to have discharged output tax (and claimed input tax credit). Tests to identify either will be key and there are examples such as Auctioneer or APMC Agents who 'handle' goods belonging to seller yet are Agents' *simplicitor*.

4. Import of services by a [16][person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.

(a) The expression 'import of service' has been defined to bear an innate requirement of an outflow of foreign convertible currency, and, therefore, excludes any form of importation of services without consideration. Therefore, this clause was inserted to encompass such of those services, which are received from related persons/ their establishments outside India. It is important for one to refer to *Explanation* 1 to Section 8 of the IGST Act, 2017 which deems any establishment outside India as an establishment of a distinct person. By virtue of this treatment, all services received by a person in India from its branches/ establishments located outside India would be considered to be a supply, even when made without consideration.

(b) For instance, say A Ltd. is a holding company in USA and B Ltd., a subsidiary in India. Many business operations are centralized in the USA such as accounting, ERP and other software, servers for the backup, legal function, etc. For the purpose of this clause, the back-end support provided by the holding company to the subsidiary company in India shall be regarded as a supply, whether or not there is a cross-charge, even if, the same is not recognised in the books, or any contracts, since it is categorized as an import of service by a person from a related person without consideration, in the course of business.

(f) Activities or Transactions to be treated as supply of goods or supply of services:

It is important to understand as to what constitutes a transaction of supply of goods or a transaction of supply of services. Section 7(1A) creates a fiction under the statute and specifies which supply is to be treated as a transaction of supply of goods or a transaction of supply of services. So understood, one can list out 17 supply transactions enlisted in Schedule II of which 4 classes of supply transactions are listed out as supply of goods while 13 others would tantamount to supply of services. On a careful

[16] *Substituted for "taxable person" by The CGST (Amendment) Act, 2018, notified through Notf No.02/2019-CT dt. 29.01.2019 - Brought into force w.e.f. 01.02.2019.*

consideration of the relevant clauses, it can be noticed that all the 6 classes of transactions listed out in Article 366(29A) of the Constitution of India are covered within the scope and ambit of Schedule II, except Para-7 being omitted[17] by the Finance Act, 2021, w.r.e.f. 1-Jul-2017 As such, 1 transaction, out of the 5, is treated as supply of goods, the other 4 are deemed to be supply of services.

Importantly, paragraph 6(a) relating to works contracts [(as defined in section 2(119)] is treated as a composite supply, of services. However, Section 2(119) has 14 distinct words, all of which are required to be read in conjunction with the words "immovable property". Contracts relating to construction of immovable property are specifically covered in paragraph 5(b) of Schedule II. Therefore, all works contracts other than those relating to construction of immovable property would amount to composite supply in terms of section 2(30) read with Section 8.

It is important for one to understand that **what is** specified/ listed in Schedule II not only provides clarity but also **what has to be** treated as supply of goods or supply of services. Yet it must be borne in mind that 'treatment' in schedule II does not 'dictate' existence of supply. In fact, the language in section 7(1A) is very clear to confer a secondary role to schedule II and give primacy to all clauses in section 7(1).

Transactions listed out in Schedule II DO NOT enlarge scope of supply as defined under section 7(1) of the Act. By shifting the 'placement' of Schedule II from clause (d) of section 7(1) to a separate section 7(1A), it is made clear that firstly, a transaction must already be determined to be 'supply' and then, for the limited purposes of 'treatment' by fiction, entries in Schedule II must be referred. This amendment was introduced with retrospective effect from 1.7.2017 vide CGST (Amendment) Act, 2018.

It is not that Schedule II is exhaustive. But where it is listed, then those transactions will receive the 'treatment' as specified. Transactions involving 'goods' if specified in Schedule II to be treated as supply of 'services' then, all provisions of GST law that are applicable to supply of services must be extended (without exception) to this transaction even though it involves goods.

It is important to understand the intent of the legislature. For example, Para 5(a) of Schedule II reads "renting of immovable property". In this situation, how does one understand the taxability of the transaction where consideration is not involved? The only way to understand this lacuna is that such transactions that lack consideration would be relegated to valuation principles, but, importantly, the transaction would be treated as a supply.

Another instance to consider is Para-1(c) of Schedule II to CGST Act which deals with 'hire purchase' transactions. Although Hire Purchase Act, 1972 has been repealed in 2005. Trade understands hire-purchase versus lease (even though lease is divided into operating and finance lease). In GST law, all kinds of lease are treated the same–

[17] *Notified vide Notf No. 39/2021-CT dt. 21.12.2021*

supply of services. Lease without possession is legally a license and license too is treated as a supply of services, but not hire-purchase. While Para-1(b) and 5(f) deal with lease and license, Para-1(c) treats hire-purchase as a supply of goods. Invoice for goods delivered under a hire-purchase will follow time and place of supply provisions applicable to goods and not to services.

This presents an anomaly which is explained in the illustration below:

- Let's start with simple operating lease arrangement where goods, say, electricity generator whose normal sale price is Rs.1,00,000 is lying in stock at Puri, Orissa is sent to a customer-site situated in Bhilai, Chhattisgarh.
- Supplier is registered in Orissa and Recipient-customer is registered in Chhattisgarh.
- Supplier makes an inter-State supply and issues invoice for Rs.12,000. This is the lease rental invoice of first month of a 10-month lease including interest built into this lease rental amount.
- Goods travel from Puri to Bhilai and is clearly an inter-State movement of goods and IGST has been charged on the invoice.
- At the end of first month, recipient-customer does NOT return the generator by transport from Bhilai back to Puri. It is retained in Bhilai to be used in the second month.
- So, the question to consider is, whether 10-month lease agreement, is one agreement with 10 instalments to pay or is it 10 monthly agreements contained in one document
- Quick answer that comes to mind is that it is 'one agreement with 10 instalments to pay'. But it is well understood that time of supply does not get deferred simply because payment is collected in instalments. And if it is one agreement to supply, then it is one supply and, therefore, has one time of supply which is the first day of the first month. By this reasoning, entire GST at, say, 18% on Rs. 1,20,000 (Rs.12,000 x 10 instalments) will be payable in first month (within due date permitted).
- On a more careful consideration of that question, it becomes clear that this lease (exceptions to be examined) is a 'month-to-month' agreement. And as all monthly agreements are identical, it is executed in a single document. Now there are 10 supplies and will have 10 times of supply and hence, GST is payable on Rs.12,000 at 18% each month.
- Now, that it is clear that lease is a month-to-month arrangement, the next question to consider is whether the lease rental invoice for the second month, will be inter-State (as the first month) or will it become an intra-State supply.
- Recollect that generator is lying with the Recipient-customer at Bhilai at the end of first month and will be continued to be used in second month without actually being returned to Puri and then received back to Bhilai.
- Now, location of supplier of services is defined in IGST Act (and also in CGST Act) but location of supplier of goods is NOT defined. To examine location of supplier of goods,

reference must be had to 'place of business' as defined in section 2(85) of CGST Act which provides that it will be (i) place where business is ordinarily carried on, in this case, it would be Puri or (ii) place where goods are stored, in this case, it would be Bhilai or (iii) place from where supplies are made or supplies are received or (iv) place where books are maintained or (v) place of an agent appointed to carry on business. Applying the above 5 tests, it appears (ii) would be the appropriate test and hence location of goods in second month would be place of business.

- Business of lease is not concluded every month. It has already been concluded at the start of first month. Hence, the first limb in the definition is non-operative in the present case and second limb in the definition comes into operation to decide the 'location of supplier of goods'.
- As a result, location of supplier of goods will be the location of the goods for the supply by way of lease in the second month. Goods being located in Bhilai will be an intra-State supply by the Supplier who is located in Puri.
- It is for this reason, that Schedule II contains Para-1(b) (and even 5(f) in case of license) that the supply of goods by way of lease will be 'treated' as supply of services.
- When transaction is treated as supply of services, then location of goods becomes irrelevant and location of supplier of services (as defined in section 2(15) of IGST Act and 2(71) of CGST Act) will determine all months to be inter-State supplies; and
- Supplier situated in Puri, Orissa will NOT be required to take registration in every State where customers' sites are located in lease or license supplies.

Now, the above concept DOES NOT apply to hire-purchase because Para-1(c) states that hire-purchase will be treated as supply of goods. The new question that arises here is whether the Supplier under hire-purchase arrangements will be liable to take registration in all States where customers' sites are located.

Experts opine that in hire-purchase, it is not a month-to-month hire-purchase but a single agreement for the entire duration and each periodic payment is only an instalment, therefore, there is only one supply with one time of supply and tax is payable at the rate applicable to those goods and on ENTIRE hire-purchase price. There is a pressing need for a Circular on this aspect of difference between HP and Lease. FAQs dated 27.12.2018 on Banking, Financial Services, and Insurance (BFSI) released by Government only refers to the aspect that exemption from tax on interest is NOT AVAILABLE to finance lease (which can be extended to HP also) even though each periodic payment clearly contains an element of 'interest' (FAQ 47).

Reason for the divergent treatment of HP compared to Lease provided by experts is stated to be in the definition of 'hire-purchase agreement' from IND AS 17 (which carries the essence from definition in section 2(c) of the (now repealed) HP Act.) It states that HP is a single agreement for the entire duration where (i) possession is already passed (ii) option to purchase (actually, option to reject) is granted on payment of last instalment and (iii) each periodic amount paid is merely an instalment within HP-

Price. Therefore, in case of HP, since GST has already been paid at the start of HP agreement, there is no requirement for HP-Supplier to be registered in every State where the HP-stock is supplied and put to use.

Care must be taken to study what is sought to be achieved by each entry in Schedule II. As an exercise one may think about Para-5(b) versus Para-6(a). And examine 'why' only 'goods are referred in Para-7 and not 'services' also. Para-7 being omitted retrospectively from 1st July, 2017 vide the Finance Act, 2021 with effect from 1.1.2022.

The activities pertaining to this clause are listed in Schedule II to the Act and discussed in the following paragraphs:

Entry in Schedule II	Analysis
1. Transfer	
a. *Any transfer of the title in goods is a supply of goods;*	This would be a clear case of a transfer of goods. It may be noted that this paragraph covers even a plain vanilla transfer of **title in** goods, either by way of sale or otherwise. Accordingly, where any goods are gifted to any person, say a motor car gifted by a businessman to his successor would be a supply of goods, provided there is a transfer of "title in" such goods. In legal parlance, the phrase "title in" and "title to" have different connotations.
b. *Any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services*;	This paragraph can be construed to be a case of a temporary transfer whereas a transfer of **title in** goods would be a sale simpliciter. One must pay attention to the language employed in this paragraph which speaks of **transfer of right** and not transfer of title. Even though the activity is categorized as a supply of service, the rate of tax applicable on the supply has been linked to the rate of tax as applicable to the supply of same goods involving transfer of **title in** goods. Hence, for all practical purposes to determine the rate of tax on such services, all notifications in respect of that particular goods would merit equal consideration to determine the rate of tax for the service. Refer the entries for Heading 9971 and 9973 to the *Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017*prescribing the rate of tax on services, covering operating lease and financial lease transactions.

Entry in Schedule II	Analysis
	Illustration: *Notification No. 37/2017- Central Tax (Rate), dated 13.10.2017*was issued to reduce the rate of tax on motor vehicle to 65% of the tax rate as applicable with certain conditions. Considering the rate of tax for leasing of such motor vehicle to be same as that of the rate of tax as applicable on the motor vehicle, even the rate of tax on leasing services stands reduced if the conditions specified in the notification are met.
c. *Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.*	Any instalment sale or hire purchase transaction with a pre-condition that the possession is transferred on day one, but the ownership is subject to payment of full consideration/ all instalments, would get categorized as a supply of goods at the time of transfer of possession. However, where the transaction is to be valued at the open market value, due care needs to be exercised so as to determine the value of instalments as against the value of the goods being transferred. One may also note that transactions of movables that could get covered under BOOT, BOLT, BOT etc., may also get covered under this paragraph.
2. Land and Building	
a. *Any lease, tenancy, easement, licence to occupy land is a supply of services;*	• While a transfer (sale) of land is outside the scope of GST laws, the law seeks to tax certain other transfers pertaining to land, by way of this paragraph *Notification No. 6/2019-Central Tax (Rate), dated 29.03.2019*, as amended by *Notification No. 3/2021-Central Tax (Rate), dated 2.06.2021*, warrants attention in this regard. One issue which clearly emerges from the notification is that in case of a joint development agreement (JDA), the activity of providing the right to construct on a land belonging to the owner, is an independent supply in the hands of the owner and that supply, is treated as a supply of service in terms of this clause. It is inferred that such a service is independent of the construction service which the developer provides to the landowner. The challenge that arises would relate to

Entry in Schedule II	Analysis
	the valuation for both these supplies. It is important to note that such transactions are vivisected for the purposes of levy of tax and have not been construed as a single demise. Please also note that this entry throws much needed light on the limits to the exclusion available in Para-5 of Schedule III to 'sale of land and (completed) building'. It appears only absolute sale would be excluded from GST and any arrangement inferior to or less than absolute sale, would not be excluded by Schedule III. Arrangements less than absolute sale would be transactions such as lease, license, easement, etc., that create 'interest' in immovable property. • The activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II is a supply of service. Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land/ building in Schedule III. Thus, it is not a non-supply under GST and consequently, a consideration for the said activity shall attract levy of GST. Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST. Since renting of residential dwelling for use as a residence is exempt [*Entry 12 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*],

Entry in Schedule II	Analysis
	grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST. [*Circular No. 44/ 18/ 2018-GST dated 02.05.2018*]
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.*	The activity of leasing or letting out of complexes for the purpose of business or commerce is covered under this clause, and not those used for the purpose of residence. It may be noted that the services by way of renting of residential dwelling for use as residence is exempt vide *Notification No. 12/ 2017–Central tax (Rate), dated 28.06.2017*, except when given to a registered person for business purposes. While on the subject, it is pertinent to note the distinction between a transaction of rent, lease and a transaction of "letting out". A transaction of rent is what is lawfully payable by a tenant; a transaction of lease is an alienation or conveyance for the purpose of enjoyment whether or not for a specified period. The word 'let' is to be understood as a verb meaning allow, permit, grant or hire.
3. Treatment or process	
Any treatment or process which is applied to another person's goods is a supply of services.	While this transaction may not be *pari materia* with a works contract activity, which could get categorized under this clause, it appears, would be "job work" as defined under section 2(68) of the Act. The only difference between the definition clause in terms of section 2(68) and this paragraph – is that the activity would be regarded as a job work only if carried out for a registered principal. However, regardless of the registration of the principal, the activity would be categorized as service by this clause. Certain clarifications have been provided *vide* Circular *No. 11/11/2017-GST, dated 20.10.2017; Circular No. 34/8/2018-GST, dated 1.03.2018*; *Circular No.*

Entry in Schedule II	Analysis
	38/12/2018, dated 26.03.2018 and Circular No. 126/45/2019-GST, dated 22.11.2019 on job work which would be relevant and are a useful read.
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, such transfer or disposal is a supply of goods by the person;*	This clause provides for taxability of such of those transactions where business assets stand transferred. Typically, assets donated could be an example of such a transaction. One must pay attention to the fact that this clause abstains from the usage of the expression "in the course or furtherance of business" or "consideration". But, when read along with 2(17)(d), shutting down of a business is also included within business. Also, goods 'forming part' of business assets when applied for non-business purposes covers all cases of 'diversion from intended end-use in business'. Such diversion may be conscious or by a *force majeure* event. Ultimately, end-use of business assets requires careful examination. And these assets may be tangible or intangible. Care must also be taken when such assets are partly used for business and partly for non-business which may not escape incidence of GST.
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, the usage or making available of such goods is a supply of services;*	Any part of the business assets if put to use for (a) private purpose or (b) made available to another person to apply it to any non-business use, are covered under this Para. Please note that this sub-para holds its own field compared to previous sub-para regarding end-use of business assets that are goods. Also, supply involving goods may be treated as supply of goods or supply of services but Para-4 is attracted when 'goods' are used as observed by these sub-paras whichever way they may be treated under other paras in Schedule II. One must exercise caution while determining what amounts to private use/ non-business use, since this will have a direct bearing on the deductions claimed under the Income tax law.

Entry in Schedule II	Analysis
	In this regard, it may be noted that a service by way of transfer of a going concern, as a whole or an independent part thereof, is an exempted service in terms of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*.
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.*	The supply under this clause can be understood to be a supply of goods, although the paragraph does not explicitly specify so. Attention is drawn to section 29(5) of the Act dealing with "Cancellation of Registration", wherein the law provides that the person applying for cancellation of registration is required to pay an amount equivalent to the credit of input tax or the output tax payable thereon, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation, whichever is higher. It is important to understand the subtle usage of the expression "ceases to be a taxable person". Cessation of being a taxable person could result from either closure of business, voluntarily or otherwise, while the clause also speaks of transfer of business in the latter part. In case of cancellation of registration, a person ceases to be a registered person and not a taxable person. One can reasonably infer that in terms of this clause if a business is transferred on a 'lock, stock and barrel' basis as a going concern then such transactions cannot be subjected to tax; even in situations where the transfer of business takes place and a representative (acting as a taxable person) carries on such business, the question of subjecting such a transaction to tax, as a cessation of business does not arise. For this reason, there is an express exemption in entry 2 to *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*.

Entry in Schedule II	Analysis
5. Supply of services: The following shall be treated as supply of service, namely: —	
a. *renting of immovable property;*	Renting wholly or partly of any immovable property is treated as a service. Therefore, unless the supply is otherwise exempted (such as renting of residential dwelling for the purpose of residence), the activity shall be regarded as a supply. Please note that 'immovable property' covers a wide variety of property that includes interests in immovable properties.
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 after its first occupation, whichever is earlier.*	Paragraph 5 of Schedule III of the Act reads "sale of land and, subject to clause (b) of Para-5 of Schedule II, sale of building. We need to pay attention as to how this clause is to be read and understood. Let us now read the clause as follows: • Sale of land • Sale of building • Sale of land and sale of building • Sale of land and building in which an undivided share in land stands transferred It must be noted with caution that Para-5 of Schedule III is 'subject to clause (b) of Paragraph 5 of Schedule II'. It is for this reason that development contracts in the real estate sector have been a subject matter of tax only if they are not saved by the exclusion in Paragraph 5 of Schedule III. Any agreement for sale of an immovable property (being in the nature of transfer of UDS in land plus building or in case of revenue share agreements which equally stipulates transfer of UDS in land plus constructed part) would be subject to tax as a service. But a plain agreement to sell land which later results in a sale deed for land being executed will not be liable to GST. Some experts are of the view that the legislature intends to overcome the Constitutional Bench decision

Entry in Schedule II	Analysis
	of the Hon'ble Supreme Court in the Larsen & Toubro's case (65 VST 1) and where any part of the consideration is received, prior to obtaining completion certificate or first occupation, would be taxed while all transactions entered into thereafter, would be excluded by Para-5 of Schedule III as sale of land and sale of (completed) building.
c. *Temporary transfer or permitting the use or enjoyment of any intellectual property right;*	The words 'or' in this clause is to be understood as a disjunctive that carves out alternatives. So, this clause envisages three separate classes of transactions which could be as follows: • Temporary transfer of any IPR; • Permitting the use of any IPR; • Permitting the use or enjoyment of any IPR. In respect of temporary transfer or usage of IPRs, one needs to travel to the relevant notification to understand their import. The scheme of classification of services for the heading 9973 provides for temporary as well as permanent transfer of IPR in respect of goods. However, with effect from 15.11.2017, the rate notification for goods has also incorporated a paragraph for the permanent transfer of IPR in respect of goods and there has been no corresponding deletion of the words "or permanent" in the rate notification for services. Due care needs to be exercised by the registered person in order to determine whether supply is of goods or services.
d. *Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;*	The dichotomy which prevailed in the erstwhile service tax and VAT regime (i.e., the question of whether software should suffer service tax or VAT or both) has been put to rest under GST. While this paragraph takes care of certain activities in respect of IT software, it must be noted that the supply of pre-developed or pre-designed software in any medium/ storage (commonly bought off-the-shelf) or

Entry in Schedule II	Analysis
	making available of software through the use of encryption keys, is treated as a supply of goods, classifiable under heading 4907 or 8523.
e. *Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;*	Some examples that may get covered under this clause are as under: • Non-compete agreement for a fee • Notice period recovery • Additional amount agreed upon for settlement of any dispute/ matter etc • Liquidated damages • Forfeiture amounts actually forfeited or adjusted • Punitive recoveries (even if computed based on quantity and price of material not delivered or piece-rate for work not completed); • Payment to induce another transaction (being itself taxable or non-taxable). Consider a situation where a supplier would supply product 'A' only if the recipient agrees to buy product 'B'- readers can think as to whether such transactions would amount to supply of goods or supply of services? Reference may be made to Maharashtra AAR decision in the case of Maharashtra State Power Generation Company Limited, ruling liquidated damages as supplies under GST. Payment made for purchase of goodwill will not come within this transaction as goodwill is goods and may be taxed under restrictive HSN or residuary Entry No. 453 of Schedule-III forming part of *Notification No. 1/2017-Central Tax (Rate), dated 28.06.2017*. However, if transferee of a business accounts 'goods' being the premium paid over and above the cost of assets received in this acquisition, no supply under this Para can be implied. As this goodwill is a term applied as part of purchase price accounting process. *Circular No. 102/21/2019-GST, dated 28.06.2019* has been issued in order to provide clarification regarding applicability of GST on additional / penal interest.

Entry in Schedule II	Analysis
	Further, Circular No. 178/10/2022-GST, dated 3.08.2022 has also been issued to provide Clarification on GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law (i) *Liquidated damages;* Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable. If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered de hors an agreement/contract between two persons wherein one person does something for another, and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. Amounts paid for acceptance of late payment, early termination of lease or for prepayment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. However, CBIC vide *Circular 178/10/2022-GST dated 03.08.2022* has categorically stated that charges recovered for breach or termination of contract is not liable to GST.

Entry in Schedule II	Analysis
	(ii) *Compensation for cancellation of coal blocks*: Due to cancellation of coal block/mine allocations on the order of Hon'ble Supreme Court, the prior allottees were given compensation by the Government. There was no contract/ agreement between the prior allottees and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it cannot be said that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable. (iii) *Cheque dishonor fine/ penalty:* The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable. (iv) *Penalty imposed for violation of laws*: Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed

Entry in Schedule II	Analysis
	or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax Education Guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties. It was also clarified *vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016* that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, byelaws, rules or regulations are not leviable to service tax. The same holds true for GST also. (v) *Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period*: The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. The employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation. (vi) *Compensation for not collecting toll charges during the period 08.11.2016 to 01.12.2016*: During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed.

Entry in Schedule II	Analysis
	(vii) *Late payment surcharge or fee*: The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since it is ancillary to and naturally bundled with the principal supply it should be assessed at the same rate as the principal supply. (viii) *Fixed Capacity charges for Power*: The minimum fixed charges/capacity charges and the variable/ energy charges are charged for sale of electricity and are not taxable as electricity is exempt from GST. Power purchase agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements, the contract is essentially for supply of electricity. (ix) *Cancellation charges*: Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways. Facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel. The amount forfeited in the case of non-refundable ticket for air travel or security deposit, or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services. However. forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning

Entry in Schedule II	Analysis
	the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Such payments being merely flow of money are not a consideration for any supply and are not taxable. Further, clarification has been issued *vide Circular No. 186/18/2022-GST, dated 27.12.2022* in respect of "*whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)".* It has been clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.
f. *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.*	Transfer of 'right to use goods' is treated as a supply of service and taxed at par, with the rate of tax as applicable to the goods involved in the transaction. *(Refer discussion under clause 1(a) of Schedule II).*
6. Composite supply: The following composite supplies shall be treated as a supply of services, namely: —	
a. Works contract as defined in clause (119) of section 2;	Our understanding of works contract under the erstwhile VAT/ sales tax/ service tax laws has no relevance in the GST regime. In the GST regime, only such of those contracts that results in an immovable property is a 'works contract'. Every other contract which was understood to be a 'works contract 'under the erstwhile laws will be treated as a composite/ mixed supply under the Act. In such cases, the

Entry in Schedule II	Analysis
	transaction may be treated as goods or services, based on the principles laid down in Section 8 (discussed separately in this Chapter).
b. 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.	The Law categorises the supplies referred to in this clause as a composite supply, given that there are multiple goods and/ or services which are essentially involved in such a transaction culminating into a composite supply of service. Under this clause both restaurant and outdoor catering services get covered. It may also be contended that the clause also covers other forms such as parcels, take-away, home-delivery, etc. As long as the circumstances where the goods supplied are 'for the purpose of immediate consumption', whether or not it is actually consumed, it would be treated as supply of services. E.g., bottled-water supplied to Railways will be supply of goods but transforms into supply of services when supplied by Railways to its passengers. Please note that the expression used here (and repeated in HSN 9963) are 'supply of goods as part of any service' will come within this fiction. Irrespective of the rate of tax as applicable on independent goods or services that are being supplied, the rate of tax as applicable to a restaurant service or outdoor catering service would apply to these goods being supplied but in the circumstances of immediate consumption, e.g., aerated drink which is served in a restaurant would be subject to tax at the rate applicable to the entire supply (restaurant service) although aerated drinks are otherwise subjected to a higher rate of tax as well as cess. By this reasoning, some experts argue that tobacco products which are sold in a restaurant and billed along with the supply of food/ beverage will also be taxed at the rate as applicable to restaurant services - as a composite supply. The test that one needs to apply in the given situation is to find out as to whether tobacco products are "other article for human consumption".

(g) Certain supplies will be neither a supply of goods, nor a supply of services: The law lists down matters which shall not be considered as 'supply' for GST by way of Schedule III. Since these are transactions that are not regarded as 'supply' under the GST Laws, there is no requirement to report the inward/ outward supply of such activities in the returns.

Activities listed in Schedule III	Analysis
1. Services by an employee to the employer in the course of or in relation to his employment.	The Paragraph includes only services and not goods. Further, the paragraph only covers those services which are provided by an employee to the employer and not *vice versa*. Please note that 'in the course or in relation to' does not save every transaction between employer-employee. Only those transactions occurring within the four corners of the 'master-servant' relationship will be saved. The same two persons (who have employer-employee) can constitute another relationship and those will be taxed on their own merits. It is also important to identify if the consideration that is claimed to be for 'services of employee' can be verified and validated with the amount reported for income-tax or provident fund purposes as 'salary'. But where there is a barter of (i) remuneration payable for services of employee and (ii) transfer of title of articles with intrinsic value to the said employee, exclusion from GST will be available on one leg of the transaction but GST will be payable on the other. After all the transfer of title in the said article is (i) a valid transfer (ii) in the course or furtherance of business and (iii) being an enforceable contract involves consideration (*quid pro quo*) in non-monetary form.

Activities listed in Schedule III	Analysis
2. Services by any Court or Tribunal established under any law for the time being in force; The term "court" includes District Court, High Court and Supreme Court.	The word Tribunal does not cover Arbitral Tribunal. Since the Tribunal is dissolved after the adjudication proceedings are concluded.
3. Functions performed by MPs, MLAs, etc.; the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; the duties performed by specified persons in a body established by the Central/ State Government or local authority, not deemed as an employee;	Persons included in this clause may be Governor, Prime Minister, President etc.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.	This clause is in consonance with the exemption available in the erstwhile service tax regime.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building (i.e., excluding sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier);	It is intriguing as to why two activities being (i) sale of land and (ii) sale of building, have been clubbed into a single paragraph. However, one may expand the paragraph to read the two activities as distinct activities, so as to treat a sale of land without the sale of building, also to be outside the purview of GST. Refer to discussions in Schedule II Para-5(b) *(supra).* Care must be taken to resist the urge to expand the words 'land and building' to cover 'all immovable properties'. Immovable property includes far more rights and interests that can be supplied without land and/ or building. Also, sale is absolute sale and not lease or license. If transactions other than sale were to be excluded, then legislature should have employed suitable words or given some indication

Activities listed in Schedule III	Analysis
	within the law to authorize expansion of the coverage. Unlike service tax, GST very cautiously allows this relief to (a) just land and (completed) building and (b) absolute sale and no other forms of interests inferior to absolute sale. Experts are divided on the issue of whether (a) sale includes absolute sale or something less also and (b) land includes land only or rights, benefits and interests in land also.
6. Actionable claims, [18][other than specified actionable claims].	A plain reading of this Para would mean that actionable claims are neither a supply of goods nor a supply of services. The definition of the word 'goods' includes the words 'actionable claims'. It has to be therefore, necessarily understood that the classes of actionable claims viz. lottery, betting and gambling if and when subjected to tax, must be taxed as goods. The irony is, while lottery is subject to tax as goods, betting and gambling have been subjected to tax as services under the heading 9996. *Notification No. 03/2023 – IT dt. 29.09.2023, w.e.f. 01.10.2020, notifies the supply of online money gaming as the goods on import of which the proviso to sub-section (1) of section 5 of the said Act shall not apply, but on which integrated tax shall be levied and collected under sub-section (1) of section 5 of the said Act.*

[18] Substituted vide The CGST (Amendment) Act, 2023 dated 18.08.2023, notified through Notf No. 48/2023–CT dated 29.09.2023 - Brought into force w.e.f. 01.10.2023, prior to its substitution, it was read as: "lottery, betting and gambling".

Activities listed in Schedule III	Analysis
7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.	This insertion w.e.f. 01.02.2019 puts to rest the confusion which had arisen on such transactions and keeps them outside the ambit of GST. Therefore, any transaction involving supply of goods by a person in India would not be called a supply when they are supplied from one place to another, both of which are outside India.
8. Supply of warehoused goods to any person before clearance for home consumption; Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.	The levy of the IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975. IGST is payable when the goods are cleared for home consumption, however, high sea sales were considered akin to inter-State transactions. Even though *Circular No. 33/2017-Cus., dated 1.08.2017*, clarified this matter that IGST on high sea sale, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. However, the point of reversal of ITC was always contentious and various advance rulings, ruled in favour of revenue, further added on to it. Now after insertion of this entry in Schedule III, reversal of ITC would no longer be required. Debate that now rages on is whether this was always the intention and, therefore, this amendment ought to be read not from 1.2.2018 but from 1.7.2017 or not, so that credit reversal can be saved. Some experts believe that the retrospective effect comes from the fact that an 'explanation' has also been inserted in section 17(3) of CGST Act.

(h) **Power to notify pursuant to section 7(2):** The Government has vested itself powers to notify 'activities or other transactions' which shall neither be treated as supply of goods nor a supply of services in terms of section 7(2). Such notification would be issued from time to time based on the recommendations of the GST Council.

- The Government has notified the following supplies in this regard:

  (i) Services by way of any activity in relation to a function entrusted to Panchayat under Article 243G of the Constitution or to a Municipality under article 243W of the Constitution

  (*Inserted vide Notification No. 14/2017-Central Tax (Rate), dated 28.06.2017 w.e.f 1.07.2017read with Notification No. 16/2018- Central Tax (Rate), dated 26.07.2018, w.e.f. 27.07.2018*)

  (ii) Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called.

  (*Inserted vide Notification No. 25/2019- Central Tax (Rate), dated 30.09.2019*)

- The inter-State movement of goods like movement of various modes of conveyance, between 'distinct persons' as explained in this Chapter, including trains, buses, trucks, tankers, trailers, vessels, containers & aircrafts, carrying goods or passengers or both, or for repairs and maintenance, would also not be regarded as supplies except in cases where such movement is for further supply of the same conveyance (Clarified *vide Circular No. 1/1/2017-IGST, dated 7.07.2017*).

The above logic would apply to the issue pertaining to inter-State movement of jigs, tools and spares, and all goods on wheels like cranes, except in cases where movement of such goods is for further supply of the same goods and consequently no IGST would be applicable on such movements (Clarified *vide Circular No. 21/21/2017-GST, dated 22.11.2017*).

(i) The Government is also empowered to specify which supply shall be treated as a supply of goods/services, as is the function of Schedule II, based on the recommendation of the GST Council, by specifying that a supply is to be treated as:

i) A supply of goods and not a supply of service;

ii) A supply of service and not a supply of goods.

(j) In summary, supply can be understood as follows:

Section	Specified 'forms' of supply	Furtherance of Business	Existence of Consideration	*Supply*	
				'made'	*'agreed to be made'*
7(1)(a)	✓	✓	✓	✓	✓
7(1)(b)	✓	✓/✗	✓	✓	✗
7(1)(c)	✓	✓	✓/✗	✓	✗

(k) The GST Law also treats certain transactions to be supplies by way of a deeming fiction imposed in the statute.

(i) The law expressly uses the phrase 'deemed supply' in section 19(3) and 19(6) in respect of inputs/ capital goods sent to a job worker but are not returned within the time period of 1 year/ 3 years permitted for their return.

(ii) The bill-to-ship-to transactions wherein the supply is deemed to have been made to the person to whom the invoice is issued, imposes an intrinsic condition that such person who receives the invoice should in turn issue an invoice to the recipient unless the transaction demands a treatment otherwise. For instance, where an order is placed on a vendor based on an order received from a customer, the registered person may request the vendor to directly ship the goods to the customer. In this case, although there is a single movement of goods, there is a dual change of title to goods, and, therefore, there would be 2 supplies. However, the other limb of the transaction would get independently tested for supply under section 7.

Clarification on taxability of shares held in a subsidiary company by the holding company [*Circular 196/04/2023-GST dated 17.07.2023*]

Securities are considered as neither goods nor services as per section 2(52) and 2(102) of the CGST Act, 2017. Further, securities include 'shares' as per definition of securities u/s 2(h) of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Therefore, purchase or sale of shares or securities, is neither a supply of goods nor services.

The SAC entry '997171' in the scheme of classification of services mentioning; *"the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest."*, does not construe that merely by holding the shares of subsidiary company, the services are being provided by holding company to the subsidiary, unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Applicability of GST in case extended warranty services are provided by manufacturers/ distributors to the customers which can be availed at the time of original supply or before the expiry of standard warranty period [*Circular 195/07/2023-GST dated 17.07.2023*]

• If the customer enters into an agreement for extended warranty at the time of original supply, then it would be considered as composite supply (principal supply being supply of goods).

GST would be payable on the consideration for such extended warranty along with the principal supply at the rate applicable on the principal supply.

• If the customer enters into an agreement for extended warranty at any time after the original supply, then it would be considered as separate contract. GST would be payable by the service provider whether it be manufacturer or distributor or any third party depending on the nature of the contract.

Statutory Provisions

8. Tax liability on composite and mixed supplies

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: —

(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; and

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

Related provisions of the Statute

Section or Rule	Description
Section 2(30)	Definition of 'Composite Supply'
Section 2(74)	Definition of 'Mixed Supply'
Section 2(90)	Definition of 'Principal Supply'
Schedule II	Activities OR Transactions to be treated as a supply of goods or a supply of services

8.1. Introduction

Every supply should involve either goods, or services, or a combination of goods or a combination of services, or a combination of both. The law provides that such supplies would be classifiable for the purpose of tax treatment, either as wholly goods or wholly services, in the case of all such combinations. Schedule II of the Act provides for this classification in some of the listed instances thereunder.

8.2. Analysis

Where a supply involves multiple (more than one) goods or services, or a combination of goods and services, the treatment of such supplies would be as follows:

(a) If it involves more than one, goods and/ or services which are naturally bundled together and supplied in conjunction with each other in the ordinary course of business and one such supply would be a principal supply:

(i) These are referred to as composite supply of goods and/ or services. It shall be deemed to be a supply of those goods or services, which constitutes the principal

supply therein. Only where all of the conditions specified for a supply of a combination of goods and/ or services to be treated as a composite supply are satisfied, the supply can be regarded as a composite supply. The conditions are as follows:

1. *The supply must be made* ***by a taxable person***: This condition presumes that composite supplies can only be effected by a taxable person.
2. *The supply must comprise two or more* ***taxable supplies***: The law merely specifies that the supplies included within a composite supply must contain two or more taxable supplies. A question may then arise as to what would be the treatment in case of a supply, that fulfils all the conditions, but involves an exempt supply – say, purchase of fresh vegetables from a store which offers home delivery for an added charge. Fresh vegetables are exempt from tax, whereas the service of home delivery would attract tax. No clarification has been issued in this regard. However, on a plain reading of the provision, it appears that this condition would not be satisfied where the composite supply involves an exempt supply. One could argue that taxable supply includes exempt by virtue of the definition of taxable supply under section 2(108).
3. *The goods and/ or services involved in the supply must be* ***naturally bundled****:* The concept of natural bundling needs to be examined on a case-to-case basis. What is naturally bundled in one set-up may not be regarded as naturally bundled in another situation. For instance, stay with breakfast is naturally bundled in the hotel industry, while the supply of lunch and dinner, even if they form part of the same invoice, may not be considered as naturally bundled supplies along with room rent.
4. *They must be supplied in conjunction with each other in the* ***ordinary course of business***: Where certain supplies could be naturally bundled, it is essential that they are so supplied in the ordinary course of business of the taxable person. For instance, it is possible to consider the supply of a water purifier along with the first-time installation service as a naturally bundled supply. However, if a supplier of water purifiers does not ordinarily provide the installation service and arranges for a person to provide the installation service in the case of an important business customer, the supply would not satisfy the said condition.
5. *Only one of the supplies involved must qualify as the* ***principal supply***: In every composite supply, there must be only one principal supply. Where a conflict between the various components of the supply, as to which of those qualify as the principal supply, cannot be resolved and results in multiple predominant supplies, the supply cannot be regarded as a composite supply.

(a) A principal supply is defined under section 2(90) to mean the predominant element of a composite supply to which any other supply forming part of that composite supply is ancillary.

(b) Therefore, mere identification of the predominant element would not suffice and it must be ascertained that all other supplies composed in the composite supply are ancillary to that predominant element of the supply.

(c) Consider the case of a supply of dining table with chairs. There would normally be no issue in this regard if both the components are made of the same material. However, if the dining table is made of granite, while the chairs are made of superior quality wood, there would be a conflict. Normally, the dining table would be regarded as the principal supply to which the supply of chairs is ancillary. However, in this case, it may not be possible to determine which of the two make the principal supply.

Where any of the aforesaid conditions are not satisfied, the transaction cannot be treated as a composite supply.

(ii) The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of the principal supply alone, since the entire supply shall be deemed to be a supply of the principal supply alone.

(iii) Some Illustrations and cases of composite supplies have been discussed in the following paragraphs:

- *Illustration (provided in section 2(30)): 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.* This implies that the supply will be taxed wholly as supply of goods.
- *Para* 5(3) of *Circular No. 32/06/2018-GST, dated 12.02.2018* clarifies that "food supplied to the in-patients as advised by the doctor/ nutritionist is a **part of composite supply of health care** and not separately taxable". It also goes on to clarify further that supplies of food by hospital to patients (not admitted) or their attendants or visitors are taxable.
- *Circular No. 11/11/2017-GST, dated 20.10.2017* has provided clarification on treatment of printing contracts. It is clarified that:
  - ✓ In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer,

supply of printing of the content supplied by the recipient of supply is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

- ✓ In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wallpaper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs *including paper belonging to the printer, the predominant supply is that of goods and the supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods and, therefore, such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.*

❖ *Circular No. 34/8/2018-GST, dated 1.03.2018* provides a clarification on some *matters including* the following:

- ✓ The activity of bus body building is a composite supply. As regards which of the components is the principal supply, the Circular directs that it be determined on the basis of facts and circumstances of each case.
- ✓ Re-treading of tyres – In re-treading of tyres, which is a composite supply, the pre-dominant element is the process of re-treading which is a supply of service, and the rubber used for re-treading is an ancillary supply. The Circular also specifies that *"Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what the essential nature of the composite supply is and which element of the supply imparts that essential nature to the composite supply"*.

❖ *Circular No. 92/11/2019-GST, dated 7.03.2019 interalia* clarified that "*It may appear at first glance that in case of offers like 'Buy One, Get One Free', one item is being 'supplied free of cost' without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.*

ii. *Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act."*

❖ *Circular No. 100/19/2019-GST, dated 30.04.2019* clarified that: *"seed testing and certification is a multi-stage process, the charges for which are collected from the seed producers at different stages. Supply of seed tags to the seed producer is nothing but an element of the one integrated supply of seed testing and certification. All the above charges, including those for issue of*

*seed certificates/tags by the Seed Certification Agency of Tamil Nadu and Uttarakhand to the seed producing organization/companies are **collected for the composite supply of seed testing and certification**, which is exempt under Notification No. 12/2017-Central Tax (Rate) Sl. No. 47 (services by Central/State Governments by way of testing/certification relating to safety of consumers and public at large, required under any law). This clarification would apply to supply of seed tags by seed testing and certification agencies of other states also following similar seed testing and certification procedure."*

- ❖ Other examples: If a contract is entered for (i) supply of certain goods and erection and installation of the same thereto or (ii) supply of certain goods along with installation and warranty thereto, it is important to note that these are naturally bundled and, therefore, would qualify as 'composite supply'. Accordingly, it would *qualify* as supply of the goods therein, which is essentially the principal supply in the contract. Thus, the value attributable to erection and installation or installation and warranty thereto will also be taxable as if they are supply of the goods therein.

(b) If it involves supply of more than one goods and/ or services which are not naturally bundled together but sold for a single price:

(i) These are referred to as mixed supply of goods and/ or services. It shall be deemed to be a supply of that goods or services therein, which are liable to tax at the highest rate of GST. The characteristics of a mixed supply are as follows:

(1) *It involves two or more **individual supplies***: It may be noted that the term used in the case of mixed supply is "individual supplies" as against "taxable supplies". Therefore, a mixed supply can include both taxable and exempted supplies.

(2) *It is made by a **taxable person***;

(3) *The supply is made for a **single price***: The fact that a composite supply does not include this condition merits consideration. Where a supply of two or more goods or services is made for different prices, the supplies cannot be regarded as mixed supplies.

(4) *The supply does **not constitute a composite supply***: The expression "constitute" has a large ambit to include cases where the supply results in a composite supply, as well as a case where some of the components together make a composite supply, whereas the bundle together would make a mixed supply. While the condition as such is not explicit, given that there is no provision for treatment of a bundled supply where only some components together qualify as a composite supply, it may be safe to interpret that a mixed supply is one which is not regarded as a composite supply.

(ii) The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of that supply which attracts the highest rate of tax. However, the law remains silent on what is the treatment required to be undertaken where more than one component is subjected to the highest rate of tax. For instance, consider a case where a commercial complex is let out for a consideration of monthly rentals, and the owner of the complex also supplies parking lots to those tenants who opt for the facility. While both the supplies attract tax @ 18%, the law does not prescribe for treatment of the transaction as that of only one of the two supplies.

(iii) Some illustrations and cases of mixed supplies have been discussed in the following paragraphs:

- ✓ *Illustration [section 2(74)]: 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.* **This implies that the supply will be taxed wholly as supply of those goods which are liable to the highest rate of GST.**
- ✓ Other examples: If a toothpaste (say for instance it is liable to GST at 12%) is bundled along with a toothbrush (say for instance it is liable to GST at 18%) and is sold as a single unit for a single price, it would be reckoned as a mixed supply. This would, therefore, be liable to GST at 18% (higher of 12% or 18% applicable to each of the goods therein).
- ✓ Another example would be where Rs.10,000 is collected as 'cover charge' to provide (i) access to a restaurant (ii) unlimited food and beverage (even alcoholic beverage) and (iii) some form of entertainment or amusement, would be a mixed supply due to (a) single price and (b) unusual accompaniments bundled together.
- ✓ Yet another example would be where a Builder for Rs. 1 crore supplies (i) 2BHK apartment and (ii) all essential white goods to all Customers. Or supplies (a) apartment and (iii) motor car to select Customers. These would also be mixed supply based on the same criteria.

(c) While there are no infallible tests for such determination, the following guiding principles could be adopted to determine whether a supply would be a composite supply or a mixed supply. However, every supply should be independently analysed.

Description	**Composite Supply**	**Mixed Supply**
Naturally bundled	Yes	No
Each supply available for supply individually	No	Yes / No

Description	Composite Supply	Mixed Supply
One is predominant supply for recipient	Yes	Yes / No
Other supply(ies) is/ are ancillary or they are received because of predominant supply	Yes	No
Each supply priced separately	Yes / No	No
Supplied together	Yes	Yes
All supplies can be goods	Yes	Yes
All supplies can be services	Yes	Yes
A combination of one/ more goods and one/ more services	Yes	Yes

Advance Ruling on Composite/ Mixed Supply: The AAR ,West Bengal opined in *Switching Avo Electro Power Ltd. [2018 (13) G.S.T.L. 84 (A.A.R. - GST)].-" Whether a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies - Held, yes - Whether where UPS and battery are supplied as separate goods, but a single price is charged for combination of goods supplied as single contract, supply of UPS and battery is to be considered as mixed supply within meaning of section 2(74), as they are supplied under a single contract at a combined single price - Held, yes"*

Further *In Re : Switching Avo Electro Power Ltd. [2018 (15) G.S.T.L. 636 (App. A.A.R. - GST)]* the Appellate Authority For Advance Ruling (AAR) disposed of the appeal as they find no infirmity in the Ruling rendered by the West Bengal Authority for Advance Ruling.

Statutory Provisions

9. Levy and Collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty percent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

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

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and

all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) *[19][The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both].*

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

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

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and 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.

Related provisions of the Statute

Section or Rule	Description
Section 1	Short title, extent and commencement
Section 2(45)	Definition of Electronic Commerce Operator
Section 2(84)	Definition of 'Person'
Section 2(98)	Definition of 'Reverse Charge'
Section 2(107)	Definition of 'Taxable Person'
Section 2(108)	Definition of 'Taxable Supply'
Section 7 (IGST)	Inter-State supply
Section 8 (IGST)	Intra-State supply
Section 10	Composition levy

[19] Substituted vide Notf No.-2/2019-Central Tax dated 29-Jan-2019, w.e.f. 1st February, 2019.

Section 11	Power to grant exemption from tax
Section 15	Value of supply
Section 25	Procedure for Registration

9.1. Introduction

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The charging section is a must in any taxing statute for levy and collection of tax. Before imposing any tax, it must be shown that the transaction falls within the ambit of the taxable event and that the person on whom the tax is so imposed also gets covered within the scope and ambit of the charging section by clear words used in the section. No one can be taxed by implication. The scope of the taxable event being 'supply' has been discussed in the earlier part of this Chapter. This section will provide an insight into the chargeability of tax on a supply. Section 9 is the charging provision of the CGST Act. It provides the maximum rate of tax that can be levied on supplies leviable to tax under this law, the manner of collection of tax and the person responsible for paying such tax.

It is interesting to note that the 4 pillars of taxation that together constitute the cornerstone for levy are couched in section 9(1). The taxable event, tax rate, collection or levy, and the person to pay are so worded that there is no escape. It appears that the law laid down by the Hon'ble Supreme Court in *Govind Saran Ganga Saran's [2002-TIOL-589-SC-CT]* case has been followed.

9.2. Analysis

The IGST Law provides the basis for determination of a supply as an intra-State supply or an inter-State supply – simply put, if the location of the supplier and the place of supply are within the same State, the transaction will be an intra-State supply, barring the case of supplies made by/ to SEZ, and all other supplies which will be regarded as inter-State supplies. Please refer to the discussion in the IGST Chapters for a holistic understanding of 'Levy' as a concept under the GST law.

a. **Taxable supply:** Every taxable supply will be subjected to GST. A taxable supply refers to any supply of goods or services or both, which qualifies as a supply in terms of section 7. The exception to this rule would be all supplies that the levy section forgoes to tax, as also all those supplies that have been notified to be nil-rated or exempted from tax. The provisions imposing GST are phrased in such a manner so as to e*xclude the supply of alcoholic liquor for human consumption* from the scope of levy itself. However, the law specifies certain other goods whereby the levy of GST has been deferred until such time the goods are notified in this regard to be taxable supplies (by the Government, based on the recommendations of the GST Council):

   i. petroleum crude

   ii. high speed diesel

iii. motor spirit (commonly known as petrol)

iv. natural gas and

v. aviation turbine fuel

b. **Tax payable:** The nature of tax would depend upon the nature of supply, viz., inter-State supplies will be liable to IGST and intra-State supplies will be liable to CGST and SGST/ UTGST (i.e., UTGST in case intra-State supplies within a particular Union Territory). Every intra-State supply will attract CGST as well as SGST (or UTGST), as follows:

i. Imposition of CGST by the Union Government of India

ii. Imposition of SGST by the respective State Government or (in case of UTGST, by the Central Government through the appointed Administrator)

c. **Taxing ingredients**: Without showing the taxing ingredients, mere arithmetic computation of demand would be contrary to law. Taxing ingredients are all those elements that must exist to attract the incidence of tax under section 9(1):

i. Nature of transaction – whether contractual or not – to determine existence of actual supply (section 7(1)(a)) or as per fictional definitions (sections 7(1)(aa), (b) and (c), 19(3)/(6), 31(7) or 35(6)).

ii. Categorization of object of supply – whether goods or services or both.

Note: inapplicability of exclusions (i) alcohol (ii) 5 petro products (iii) Schedule III supplies is burden on person making assertion about incidence of tax (taxpayer in self-assessment and Revenue in notice of demand).

iii. Fictional treatment of object of supply – goods as services or services as goods – Schedule II.

iv. Ascertain of whether transaction is composite, mixed or independent supply.

v. HSN classification as per tariff understanding of commercial terms used to describe including tariff conditions – whether mandatory to given tariff or optional with alternate tariffs.

Note: Applicability of exemption is a burden of taxpayer to demonstrate eligibility to any exemption and satisfaction of all conditions attendant to such classification.

vi. Time of supply;

vii. Place of supply – to determine intra-State or inter-State character of supply.

viii. Valuation of supply – whether based on contract price (subject to specific adjustments under section 15(2) and (3)) or OMV (section 15(4)) or prescribed transaction value (section 15(5)).

Note: Inapplicability of three (3) disqualifications listed in section 15(1) is a burden on taxpayer for tax incidence to apply on contract price (transaction value) and not OMV.

ix. Determination of liability on forward charge, that is, show the inapplicability of liability on reverse charge basis.

Note: Tax payable on reverse charge cannot be discharged on forward charge or vice versa, not even by a willing taxpayer

Whenever incidence of output tax is examined, all nine (9) taxing ingredients must be shown to exist, whether in self-assessment or in a notice of demand. Without these taxing ingredients, demand will be incomplete and not payable. And even if any one of these ingredients are missing or unsubstantiated, it will be fatal to any demand. It is for this reason that no demand for output tax can be lawfully made based on estimation. Contrast the minimal requirements to demand tax under section 63 and compare the complete set of taxing ingredients required to demand tax under section 73 or 74.

Claim of input tax credit and its utilization to discharge output tax is independent of incidence of output tax, whether in self-assessment or against a notice of demand. Omission to claim credit or reversal of admissible credit does not excuse incidence of full extent of output tax.

d. **Tax shall be payable by a 'taxable person':** The tax shall be payable by a 'taxable person' i.e., a person who is liable to obtain registration, or a person who has obtained registration. Please note that there can be multiple taxable persons for a single supply. It comprises separate establishments of persons registered or liable to be registered under sections 22 or section 24 of the CGST Act. *Please refer to the discussion under section 25 for a thorough understanding of this concept.* Under the GST law, the person liable to pay the tax levied on a supply under the statute would be one of the following:

i. The supplier, in terms of section 9(1) – Referred to as forward charge. This is ordinarily applicable in case of all supplies unless the supplies qualify under the other two categories, i.e., this would be the residual category of supply wherein the supplier would be liable to pay tax. (In this regard, it must be noted that the term 'supplier' is attributed to an establishment, and not to the PAN as a whole. Therefore, if the supply is effected from an establishment in Karnataka, the establishment of the same entity located in say Delhi, cannot discharge the liabilities);

ii. The recipient – In such a case, all the provisions of the Act as are applicable to the supplier in a normal case, would apply to the recipient of supply (being a taxable person, and not the PAN as explained above). A supply would be subjected to tax in the hands of the recipient only in the following cases:

(i) *Notified supplies under section 9(3):* The supply of goods or services is notified as a supply liable to tax in the hands of the recipient vide *Notification No. 4/2017-Central Tax (Rate), dated 28.06.2017* in case of goods and *Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017* in case of services, as amended from time to time. Please note that in such

cases, the supplier would not discharge the liability, since, the law imposes the obligation on the recipient. The recipient of supply would be liable to discharge the taxes.

(ii) *Supplies received from unregistered persons* under section *9(4):* The supply is an inward supply of goods and/ or services affected by a registered person from an unregistered supplier. In this regard, it may be noted that the levy under this sub-section applies (as amended by CGST Amendment Act) only in respect of (a) 'class of registered persons' and (b) 'categories of goods or services', as may be notified. W.e.f. 1st April, 2019, the Central Government *vide Notification No. 7/2019- Central Tax (Rate), dated 29.03.2019*, notified the following categories of goods or services or both, in respect of which registered person shall pay tax on reverse charge basis as recipient of such goods or services or both:-

Sl. No.	Category of supply of goods and services	Recipient of goods and services
1.	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter
2.	[20]Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975	Promoter
3.	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975)	Promoter

[20] *Substituted vide Notf No. 24/2019-CT (R), dt. 30.09.2019 w.e.f 1.10.2019*

	supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	

Section 9(3): Tax shall be payable by the registered person

(i) Central Government on the recommendation of the GST Council has notified goods in respect of which intra-State and inter-State supplies, central/ integrated tax shall be paid by the recipient of such goods under reverse charge *vide Notification No. 4/2017-Central Tax (Rate), dated 28.06.2017* and *Notification No. 4/2017-Integrated Tax (Rate), dated 28.06.2017* respectively. These goods are as under:

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
[21][*3A.*	*3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90*	*Following essential oils other than those of citrus fruit namely: -* *(a) Of peppermint (Mentha piperita);* *(b) Of other mints: Spearmint oil (ex-mentha spicata), Water*	*Any unregistered person*	*Any registered person*]

[21] *Substituted by Notf No. 14/2022-CT (R), dated 30.12.2022 and Notf No. 14/2022- IT(R), dated 30.12.2022, both w.e.f. 1.01.2023*

		mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis		
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yam from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
[22][4A.	5201	Raw cotton	Agriculturist	Any registered person]
5.		Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. *Explanation.*—For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (*c*) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub-section (1) of section 11 of the Lotteries (Regulation) Act, 1998 (17 of 1998).

[22] *Inserted by Notf No. 43/2017-CT(R), dated 14.11.2017 and Notf No.45/2017- IT(R), dated 14.11.2017, both w.e.f. 15.11.2017*

[23] [6.	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority	Any registered person]
[24] [7.	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person]

(ii) Central Government on the recommendation of the Council has notified the category of supply of services on which GST shall be paid by the recipient on reverse charge basis (***Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017* as amended from time to time**)

Sl. No.	***Category of Supply of Services***	***Supplier of Service***	***Recipient of Service***
(1)	***(2)***	***(3)***	***(4)***
1	*Supply of Services by a goods transport agency (GTA)* [25]*[~~who has not paid central tax at the rate of 6%~~] in respect of transportation of goods by road to—* *(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or* *(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or*	*Goods Transport Agency (GTA)*	*(a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or* *(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or* *(c) any co-operative society established by or under any law; or* *(d) any person registered under the Central Goods and*

[23] Inserted by Notf No.36/2017-CT(R), dt.13.10.2017 and Notf No.37/2017- IT(R), dt. 13.10.2017, both w.e.f. 13.10.2017

[24] Inserted by Notf No. 11/2018-CT(R), dt. 28.05.2018 and Notf No. 12/2018- IT(R), dt. 28.05.2018, both w.e.f. 28.05.2018

[25] Omitted vide Notf. No. 5/2022-CT(R) dt. 13.07.2022, w.e.f. 18.07.2022. Prior to its omission said words as inserted by Notf. No. 22/2017-CT(R) dt. 22.08.2017

	(c) any co-operative society established by or under any law; or *(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or* *(e) anybody corporate established, by or under any law; or* *(f) any partnership firm whether registered or not under any law including association of persons; or* *(g) any casual taxable person.* *[26][Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -* *(a) a Department or Establishment of the Central Government or State Government or Union territory; or* *(b) local authority* *(c) Governmental agencies,* *which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of*		*Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or* *(e) any body corporate established, by or under any law; or* *(f) any partnership firm whether registered or not under any law including association of persons; or* *(g) any casual taxable person; located in the taxable territory.*

[26] Inserted vide Notf No. 29/2018 – C T (R) dt 31.12.2018, w.e.f. 01.01.2019.

	deducting tax under section 51 and not for making a taxable supply of goods or services:]] *[27][Provided further that nothing contained in this entry shall apply where, -* *(i) the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and* *(ii) the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him.]*		
2	*[28][Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.* *Explanation.—"Legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority]*	*An individual advocate including a senior advocate or firm of advocates.*	*Any business entity located in the taxable territory.*

[27] Inserted vide Notf. No. 5/2022-CT(R) dt. 13.07.2022 w.e.f. 18.07.2022

[28] Corrected vide M.F. (D.R.) Corrigendum F. No. 336/20/2017-TRU, dt.25.09.2017 to Notf No. 13/2017-C T (R) dt. 28.06.2017

3	*Services supplied by an arbitral tribunal to a business entity.*	*An arbitral tribunal*	*Any business entity located in the taxable territory.*
4	*Services provided by way of sponsorship to any body corporate or partnership firm.*	*Any person*	*Any body corporate or partnership firm located in the taxable territory.*
5.	*Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding,-* *(1) renting of immovable property, and* *(2) services specified below-* *(i) services by the Department of posts [29][and the Ministry of Railways (Indian Railways)] [30][****];* *(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;* *(iii) transport of goods or passengers*	*Central Government, State Government, Union territory or local authority*	*Any business entity located in the taxable territory.*
[31][5A	*Services supplied by the Central Government [32][[excluding the Ministry of Railways (Indian Railways)]], State Government, Union territory or local authority by way of renting of immovable property to a person*	*Central Government, State Government, Union territory or local authority*	*Any person registered under the Central Goods and Services Tax Act, 2017.]*

[29] *Inserted vide Notf No. 14/2023- CT (R) dt. 19-10-2023 w.e.f. 20.10.2023.*
[30] *Omitted vide Notf. No. 5/2022-CT(R) dt. 13.07.2022 w.e.f. 18.07.2022.*
[31] *Inserted vide Nof No. 3/2018-CT (Rate), dt. 25.01.2018 w.e.f. 25.01.2018.*
[32] *Inserted vide Notf No. 14/2023- CT(R) dt.19.10.2023 w.e.f. 20.10.2023.*

	registered under the Central Goods and Services Tax Act, 2017 (12 of 2017)		
[33][5AA	*Service by way of renting of residential dwelling to a registered person.*	*Any person*	*Any registered person]*
[34][5B	*Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.*	*Any Person*	*Promoter*
5C	*Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.*	*Any Person*	*Promoter]*
6	*Services supplied by a director of a company or a body corporate to the said company or the body corporate.*	*A director of a company or a body corporate*	*The company or a body corporate located in the taxable territory.*
7	*Services supplied by an insurance agent to any person carrying on insurance business.*	*An insurance agent*	*Any person carrying on insurance business, located in the taxable territory.*
8	*Services supplied by a recovery agent to a banking company or a financial institution or a non-banking*	*A recovery agent*	*A banking company or a financial institution or a non-banking financial company, located in the taxable*

[33] Inserted vide Notf. No. 5/2022-CT(R) dt. 13.07.2022, w.e.f. 18.07.2022
[34] Inserted vide Notf. No. 5/2019-CT(R) dt. 29.03.2019, w.e.f. 01.04.2019

	financial company.		*territory.*
[35][9	*Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.*	*Music composer, photographer, artist, or the like*	*Music company, producer or the like, located in the taxable territory.]*
[36][9A	*Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.*	*Author*	*Publisher located in the taxable territory:* *Provided that nothing contained in this entry shall apply where -* *(i) the author has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST Commissioner, as the case may be, that he exercises the option to pay central tax on the service specified in column (2), under forward charge in accordance with section 9(1) of the Central Goods and Services Tax Act, 2017*

[35] Substituted vide Notf No.-22/ 2019-CT(R), dt. 30.09.2019, w.e.f. 01.10.2019

[36] Inserted vide Notf No.-22/ 2019-CT(R), dt. 30.09.2019, w.e.f. 01.10.2019

			under forward charge, and to comply with all the provisions of Central Goods and Services Tax Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; *(ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher.]*
[37][10	*Supply of services by the members of Overseeing Committee to Reserve Bank of India*	*Members of Over-seeing Committee constituted by the Reserve Bank of India*	*Reserve Bank of India.]*
[38][11	*Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).*	*Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.*	*A banking company or a non-banking financial company, located in the taxable territory.]*
[39][12	*Services provided by business facilitator (BF) to a banking company*	*Business facilitator (BF)*	*A banking company, located in the taxable territory.*

[37] *Inserted vide Notf No.33/2017-CT (R) dt.13.10.2017, w.e.f. 13.10.2017.*
[38] *Inserted vide Notf No.15/2018-CT(R) dt.26.07, 2018, w.e.f. 27.07.2018.*
[39] *Inserted vide Notf No.29/2018-CT(R) dt.31.12.2018, w.e.f. 01.01.2019.*

13	*Services provided by an agent of business correspondent (BC) to business correspondent (BC)*	*An agent of business correspondent (BC)*	*A business correspondent, located in the taxable territory.*
14	*Security services (services provided by way of supply of security personnel) provided to a registered person:* *Provided that nothing contained in this entry shall apply to,-* *(i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or* *(b) local authority; or* *(c) Governmental agencies;* *which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or* *(ii) a registered person paying tax under section 10 of the said Act.*	*Any person other than a body corporate*	*A registered person, located in the taxable territory]*
[40][41][15	*Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is*	*Any person, other than a body corporate who supplies the*	*Any body corporate located in the taxable territory.]*

[40] Substituted vide Notf No 29/ 2019-CT(R), dt. 31.12.2019 w.e.f. 31.12.2019
[41] Inserted vide Notf No. 22/2019-CT(R) , dt. 30.09.2019 w.e.f. 01.10.2019

	included in the consideration charged from the service recipient, provided to a body corporate.	*service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent to the service recipient*	
[16	*Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.*	*Lender i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI*	*Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.]*

(iii) In addition to the above list given under Central Tax- Rate, following additional category of supply of services are listed under *Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017* on which GST shall be paid by the recipient on reverse charge basis:-

Sl. No.	**Category of Supply of Services**	**Supplier of Service**	**Recipient of Service**
(1)	**(2)**	**(3)**	**(4)**
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.

[42][~~10~~	~~Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.~~	~~A person located in non -taxable territory~~	~~Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.~~]

ANALYSIS:

- No partial reverse charge is applicable under GST. 100% tax will be paid by the recipient if reverse charge mechanism applies.
- All taxpayers required to pay tax under reverse charge have to mandatorily obtain registration and the threshold exemption is not applicable on them.
- Payment of taxes under reverse charge cannot be made with utilisation of input tax credit and has to be made in cash.
- The recipient can take the credit of tax paid on inward supplies liable to reverse charge once he makes payment of tax in cash.
- It must be borne in mind that tax leviable under section 9(1) is only discharged under section 9(3) (or 9(4) for that matter). No demand for tax under section 9(3) can survive without the incidence being established under section 9(1).
- A goods transport agency (GTA) has an option to pay GST under forward charge [5% without ITC or 12% with ITC] or reverse charge [5% without ITC]. GTA has to exercise the option to pay GST under forward charge for a financial year by making a declaration in Annexure V by 15th March of the preceding financial year [*Notification No. 11/2017- CT (Rate) dated 28.06.2017* amended vide *Notification No. 3/2022-CT(R) dt. 13.07.2022*].
- *Notification No. 05/2023-CT(R) dt. 09.05.2023* has further amended Notification No. 11/2017- CT (Rate) to extend the last date for filing Annexure V by a GTA for the financial year 2023-24 to 31st May, 2023. A GTA who commences a new business or crosses the threshold for registration during any financial year, may file Annexure V within 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration, whichever is later.

Note: Payment of tax under reverse charge is the default mode of payment of tax for a GTA. Annexure V is required to be filed only when GTA wishes to pay tax under forward charge.

- Amendment in the option to be exercised by the GTAs to pay GST under forward

[42] *Omitted vide Notf No. 13/2023- IT(R) dt. 26.09.2023 w.e.f. 01.10.2023.*

charge. *Notification No. 11/2017-CT(R) dt. 28.06.2017* and *Notification No. 13/2017-CT(R) dt. 28.06.2017* have been amended as under:

- Goods Transport Agencies (GTAs) shall not be required to file Annexure V of Notification No. 11/2017-CT(R) dt. 28.06.2017 for opting to pay GST under forward charge every year. Such option can be exercised by GTAs during the period from 1st January to 31st March of the preceding financial year as against the earlier due date of 15th March of the preceding financial year. Amendments have been made in Annexure V to this effect.
- If a GTA has exercised the option to pay tax under forward charge for a particular financial year, it shall be deemed that the option has been exercised for the next and future financial years also unless the GTA files a declaration in Annexure VI that it wants to revert to the reverse charge mechanism during 1st January to 31st March of the preceding financial year. Annexure VI titled as "Form for exercising option by a Goods Transport Agency intending to revert under reverse charge mechanism to be filed before the commencement of any financial year to be submitted before the jurisdictional GST Authority" has been inserted in Notification No. 11/2017-CT(R) dt. 28.06.2017 for this purpose. Consequential changes have been made in Annexure III to Notification No. 13/2017-CT(R) dt. 28.06.2017.
- The above amendments have become effective from 27.7.2023.
- Notification No. 08/2023- CT(R) dt. 26.07.2023, Notification No. 06/2023-CT(R) dt. 26.07.2023.

RCM on Sponsorship-Clarification

Advertisement falls under forward charge basis of taxation whereas sponsorship falls under reverse charge basis of taxation. The differentiation lies in the object of the contract, that is, if the Payee offers publicity and Payer contributes directly and inextricably with publicity as the purpose of the payment then it is advertisement. But if publicity is incidental, and the purpose of the payment is to defray costs incurred or expected to be incurred by the Payee, then it would be sponsorship.

The Board has clarified in circular 116/35/2019-GST dated 11.10.2019 where the nature and extent of publicity procured as a direct result of this payment is brought out. Although this circular is not in the context of RCM notification, it greatly illuminates the understanding to be applied and in a very conservative manner.

RCM on Motor Vehicles-Clarification

The Board clarified Reverse Charge Mechanism (RCM) on renting of motor vehicle *vide Circular No. 130/49/2019-GST, dated 31.12.2019*, which is as under-

1. Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from

the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC.

2. The GST Council in its 37th meeting dated 20.09.2019 examined the request to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @ 5% to corporate entities may be placed under RCM. RCM was not recommended for suppliers paying GST @12% with full ITC, so that they may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them.

   Accordingly, the following entry was inserted *vide Notification No. 22/2019-Central Tax (Rate), dated 30.09.2019*in the RCM notification i.e., *Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017*with effect from 01.10.19 :

Sl. No.	**Category of Supply of Services**	**Supplier of Service**	**Recipient of Service**
(1)	(2)	(3)	(4)
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

3. Post issuance of the notification, references has been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier. Therefore, the wording of the notification that "any person other than a body corporate, paying central tax at the rate of 2.5%" is not free from doubt and needs amendment/ clarification from the perspective of drafting.

4. The matter has been examined. When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question would be that–

   (i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,

   (ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

5. Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non-body corporate clients, to bring in greater clarity, Serial No. 15 of the *Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017* has been amended *vide Notification No. 29/2019-Central Tax (Rate), dated 31.12.2019 (relevant extract below)* to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:

   (a) is other than a body-corporate;

   (b) does not issue an invoice charging GST @12% to the service recipient; and

   (c) supplies the service to a body corporate.

Sl. No.	**Category of Supply of Services**	**Supplier of Service**	**Recipient of Service**
(1)	(2)	(3)	(4)
15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient	Any body corporate located in the taxable territory.".

6. It may be noted that the present amendment of the notification is merely clarificatory in nature and therefore for the period 01.10.2019 to 31.12.2019 also, clarification given at Para-5 above shall apply, as any other interpretation shall render the RCM notification for the said service unworkable for that period.

7. It may also be important to examine if renting of motor vehicle is on (i) activity basis or (ii) time basis. In the former it would be passenger transport service not attracting RCM but latter would be renting attracting RCM since even idle time would be charged for. Careful study of the principle brought out in (i) leasing (ii) right to use tangible goods, both under earlier laws, would give invaluable insight into the working of RCM provisions.

(iv) *Gujarat High Court in Mohit Minerals-Ocean freight is not subject to RCM in case of CIF transaction.*

In the case of *Mohit Minerals (P) Ltd. v. UOI 2020 (33) G.S.T.L. 321 (Guj.), dated 23.01.2020*, the Hon'ble High Court has held that no IGST is leviable on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Entry 9(ii) of *Notification No. 8/2017-Integrated Tax (Rate), dated 28.06.2017* and Entry No. 10 *of Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017* declared as *ultra vires* the IGST Act due to lack of legislative competency and accordingly held to be unconstitutional. Under section 5(3) of the IGST Act, the person liable to pay tax can only be "the recipient" of supply. The term "recipient" has to be read in the sense in which it has been defined in the CGST Act. Importer cannot be said to be the recipient of the ocean freight service in the instant case since the importer has neither availed the service of transportation of goods nor he is liable to pay consideration for such service. The foreign shipping line is engaged by foreign exporter. The importer cannot be made liable to pay tax on a mere premise that the importer is directly or indirectly recipient of service.

The Court observed that it is neither an inter-State supply under section 7 nor an intra-State supply under Section 8 of the IGST Act as follows:

For section 8, both the location of the supplier and place of supply should be in India. The same is not applicable since location of foreign shipping line is outside India. Section 7(1) & section 7(2) are dealing with goods and are not relevant. For section 7(3), both the location of the supplier and place of supply should be in India. The same is not applicable since location of foreign shipping line is outside India. Section 7(4) i.e., import of service, is not applicable since the location of recipient of service, i.e., the foreign exporter being outside India. Section 7(5)(a) is not applicable since location of foreign shipping line is outside India. Section 7(5)(b) pertaining to SEZ is also not applicable.

A supply where both provider and recipient are outside India can be made leviable to tax only under Section 7(5)(c) i.e., residuary clause, provided that "supply is in taxable territory". The same cannot be equated with "place of supply". Supply in the taxable territory shall mean a supply, all the aspects or majority of aspects, of which takes place in taxable territory. Thus, the provision may cover cases such as a foreign tour operator conducting a tour in India for a foreign tourist. Mere fact that transportation of goods terminates in India, will not make such supply of transportation of goods as taking place in India. Thus, no tax can be levied and collected from importer/ petitioner. In the instant case, the freight has already suffered IGST as a part of value of goods imported. Dual levy of IGST cannot be imposed treating it as supply of service. Double taxation, through delegated legislation, where statute does not provide, is not permissible.

Hon'ble **Supreme Court** in the case of ***UOI v. Mohit Minerals (P) Ltd., 2022 (61) G.S.T.L. 257 (SC)***, *inter-alia*, held that in case of CIF contract of imports, the importer cannot be subjected to RCM, once the ocean freight is paid by the foreign seller to the

foreign shipping line. On a conjoint reading of sections 2(11) and 13(9) of the IGST Act read with section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an "inter-state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service. The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient (in this case the importer) by *Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017* is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in section 5(3) of the IGST Act for the purposes of reverse charge. In the given case, the person liable to make payment of the consideration would be the foreign supplier. The Indian importer cannot be considered as the recipient of the services.

In view of the above, the Hon'ble Supreme Court held:

Since, the Indian importer is liable to pay IGST at the point of importation on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line by vivisecting the CIF contract would be in violation of section 8 of the CGST Act. Hence, the tax collected under ocean freight was violative of Article 265 of the Constitution i.e., without authority of law.

(v) **The e-commerce operator, in terms of section 9(5):** The Government is empowered to notify categories of services wherein the person responsible for payment of taxes would neither be the supplier nor the recipient of supply, but the electronic commerce operator ('e-commerce operator') through which the supply is affected. It is important to note that, in case of such supplies, the e-commerce operator is neither the supplier nor does it receive the services. The e-commerce operator is merely the person who owns, operates or manages digital or electronic facility or platform for e-commerce purposes. Under the erstwhile service tax law, the e-commerce operator in such an arrangement was referred to as an 'aggregator'.

- The Government has notified following services in this regard *vide Notification No. 17/2017-Central Tax (Rate), dated 28.06.2017* as amended from time to time:
  - i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, [43][omnibus or any other motor vehicle except omnibus];
  - ii) [44][ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.]

[43] *Substituted vide Notf No. 16/2023-CT(R) dt.19.10.2023 w.e.f. 20-10-2023 before it was read as, "omnibus or any other motor vehicle".*

[44] *Inserted vide Notf. No. 16/2023-CT (R) dt. 19.10.2023 w.e.f. 20.10.2023.*

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

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

v) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

- Where the e-commerce does not have a physical presence in the taxable territory, any person representing him in the taxable territory would be liable to pay the taxes. If no such representative exists, the e-commerce operator is liable to appoint such a person in order to discharge this obligation.
- All other provisions of the Act will apply to the e-commerce operator or his representative (as the case may be) in respect of such services, as if, he is the supplier liable to pay tax on the services.
- In this regard it may be noted that liability to pay tax on the supply by the e-commerce operator is not another provision imposing tax on the reverse charge basis. Reference to the definition of reverse charge in section 2(98) makes it clear that reverse charge is limited to tax payable under section 9(3) and 9(4). It is very important to note that the language employed in section 9(5) makes it clear that the liability to pay tax on the supply is placed on the e-commerce operator, "as if", the e-commerce operator were the "supplier liable to tax". The marked departure of the language from that used in case of the reverse charge provisions suggests that:

  (a) The tax that is applicable on the supply is to be paid by the e-commerce operator, as if, such e-commerce operator was the supplier liable to tax. The provisions require the e-commerce operator to step into the shoes of the actual supplier, for the limited purpose of discharging his liability, and the supply by the e-commerce operator to the actual supplier (facilitation services, commission services or by any service *inter se*) will be taxable separately, in the hands of the e-commerce operator as a supplier of service to the actual supplier.

  (b) The actual supplier is no longer liable to pay any tax. This means that the suppliers will not be the person liable to pay tax on such services affected through an e-commerce operator, even if, they have obtained registration. This is clear not only from the exclusion from compulsory registration under

section 24(ix) [to such actual suppliers where the e-commerce operator will pay tax under section 9(5)] but also allowed to enjoy exclusion from registration under section 23(1)(a) when entire turnover is taxed under section 9(5) in the hands of e-commerce operator. Also refer *Notification No. 17/2017-Central Tax (Rate), dated 28.06.2017* where exception is made for 'requirement to otherwise register under section 22" to such actual supplies attracting section 9(5).

Readers may refer to decision of Karnataka AAR in the matter of *Opta Cabs (P) Ltd*. as below:

Question raised: Whether the money paid by the customer to the driver of the cab for the services of the trip is liable to GST and whether the applicant company is liable to pay GST on this amount?

e. **Ruling:** The services of transportation of passengers is supplied to the consumers through the applicant and it shall be deemed that the applicant is the supplier liable to pay tax in relation to the supply of such service by the taxi operator - in accordance with the provisions of section 9(5) read with *Notification No. 17/2017-Central Tax (Rate), dated 28.06.2017*, the applicant is liable to pay tax on the amounts billed by him on behalf of the taxi operators for the service provided in the nature of transportation of passengers through it.

f. **Rate of tax:** The rate of tax will be applicable as specified in the *Notification No. 1/2017- Tax (Rate), dated 28.06.2017*, for goods and *Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017*, for services issued in this regard and read with other Rate notifications which may be issued to partially exempt any other goods or services from payment of tax. In order to determine the applicable rate of tax, the following approach is to be adopted:

(i) Identify whether the supply is an intra-State supply;

(ii) Identify whether the supply is a plain supply/ composite supply/ mixed supply and adopt the treatment accordingly;

(iii) Identify HSN/ SAC of the goods or services and applicable rate of tax as per rate notification;

(iv) Identify whether the HSN/ SAC applies to more than one description-line. If yes, analyse which of the description is more specific to the supply in question;

(v) Once classification is ascertained, identify whether such goods or services qualify for any exemption (partially or wholly) from payment of tax.

g. **Taxable value:** The rate of tax so notified will apply on the value of supply as determined under section 15. The transaction value would be accepted subject to inclusions/ exclusions specified in the said section, where the price is the sole consideration for the supply and the supplier and recipient are not related persons. In all other cases, the value of supply will be that value which is determined in terms of the rules (i.e., Chapter IV of the CGST Rules).

h. **Classification of Goods or Services:** In order to apply a particular rate of tax, a taxable person needs to determine the classification of his supply as to whether supply constitutes a supply of goods or services. Once the same is determined, further classification in terms of HSN/ SAC of goods and services has to be made by the taxpayer so as to arrive at the rate of tax at which he is required to pay tax. At the outset, it is important to note that HSN for goods are contained in Chapters from 1 to 98 and SAC for Services are contained in Chapter 99. Since classification of goods is older and is based on knowledge gathered from precedents on HSN classification, we shall discuss the steps for classification of goods. The steps for determination of proper classification is as under:

I. It is important to note that classification of each product supplied has to be made separately, if supply of such product is independent. This shall include all by-products, scraps etc.

II. Identify the description and nature of the goods being supplied. One must confirm that the product is also similarly or more specifically covered in the Customs Tariff and HSN 2017. The Section Notes and Chapter Notes to the applicable Schedule to be read as if it forms an integral part of the Tariff for the purpose of classification.

III. If there is any ambiguity, first reference shall be made to the Rules for interpretation of the Customs Tariff.

IV. As per the Rules, first step to be applied is to find the trade understanding of the terms used in the Schedule, if the meaning or description of goods is not clear.

V. If the trade understanding is not available, the next step is to refer to the technical or scientific meaning of the term. If the tariff headings have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding.

VI. If none of the above is available, reference may be had to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use.

VII. In case of the unfinished or incomplete goods, if the unfinished product bears the essential characteristics of the finished product, its classification shall be same as that of finished product.

VIII. If the classification is not ascertained as per above point, one has to look for the nature of product which is more specific.

IX. If the classification is still not determinable, one has to look for the ingredient which gives the article its essential characteristics.

X. It is important to note that in following cases of supply of services, same rate of central tax as applicable on supply of like goods involving transfer of title in goods would be applicable:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.) of Central Tax	Rate (per cent.) of Integrated Tax
15	**Heading 9971** (Financial and related services)	(ii) 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.	Same rate of central tax as on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as on supply of like goods involving transfer of title in goods
		(iii) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of Central tax as on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as on supply of like goods involving transfer of title in goods
17	**Heading 9973** (Leasing or rental services, without operator)	(iii) 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.	Same rate of Central tax as on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as on supply of like goods involving transfer of title in goods
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of Central tax as on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as on supply of like goods involving transfer of title in goods

		(viii) Leasing or rental services, without operator, other than (*i*), (*ii*), (*iii*), (*iv*), (*vi*) and (*viia*) above.	Same rate of Central tax as applicable on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as applicable on supply of like goods involving transfer of title in goods

Note: The only exception to the above table is leasing of motor vehicle which was purchased by the Lessor prior to July 1, 2017, leased before July 1, 2017 and no ITC of Central Excise, VAT or any other taxes on such motor vehicle was availed by him. If all these conditions are fulfilled, then the lessor is liable to pay GST only on 65% of the GST applicable on such motor vehicle. – Refer *Notification No. 37/2017-Central Tax (Rate), dated 13.10.2017.*

9.3 Issues and Concerns

1. The activity of import of service is subjected to tax, whether or not such import is in the course or furtherance of business. While the relaxation from obtaining registration is provided to a 'non-taxable online recipient' who imports OIDAR services, relaxation to other persons who import services for personal use flows from exemption in *Entry No. 10(a) to Notification No. 9/2017-Integrated Tax (Rate), dated 28.06.2017.*

2. Although, the word 'business' is clearly defined under section 2(17), the phrase 'in the course or furtherance of business' has not been defined in the Act. The meaning that can be derived from this phrase is so wide that it can include every activity undertaken by a business concern, including activities in the course of employment, since employment is a subset of the activities undertaken in the course of business.

3. A plain reading of the meaning of the terms 'composite supply' and 'mixed supply' suggests that the concept pre-supposes a condition that they are affected by taxable persons. Say, in case of a supply effected by a non-taxable person to a registered person attracting tax under reverse charge, the supply would not be regarded as a composite supply even where all the conditions are satisfied, and cannot be regarded as a mixed supply either, for the same reason. Such an understanding would defeat the very purpose of the legislative intent. Therefore, in case of reverse charge transactions, the supply must be understood to have been made by the registered person who is the recipient of supply, i.e., even supplies effected by unregistered persons may be qualified to be termed 'composite supply' or mixed supply', subject to the normal conditions which would otherwise apply.

4. While the concept of 'mixed supplies' requires that the goods and/ or services supplied in the mixed supply must be supplied for a single price, there is no such requirement in the case of composite supplies. Therefore, a person effecting a mixed supply of goods would certainly have an option to strategically alter the bundle of supplies so that all the

goods/ services included in the mixed supply would not all be subjected to the highest rate of tax applicable on the said supplies.

On the other hand, a supplier who effects a composite supply wishes to charge for the supply of two or more goods or services separately, which otherwise constitute a composite supply, a question may arise as to whether the rate of tax applicable on all the supplies would continue to be the rate applicable to the principal supply. Say, a supplier of air conditioners (taxable @ 28%) who always affects the supply along with the installation service, now chooses to split the cost of the service in order to tax such service portion at the rate of 18%. Such a split-up may be questioned, given that there is no escape from treatment as a composite supply merely because the values are ascertained separately. Generally, transactions that are intentionally broken up with an intent to minimise the impact of tax would be subject to scrutiny/ valuation.

9.4 FAQs

Q1. In respect of exchange of goods, namely gold watch for restaurant services, will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?

Ans. Yes, the transaction of exchange is specifically included in the scope of "supply" under section 7. Thus, exchange could be taxable both ways. Provided the person exchanging gold watch is in the business of selling watches (A contrary view could also be taken. It depends on the facts of each and every case).

Q2. What are the examples of 'disposals' as used in 'supply'?

Ans. "Disposals" could include donation in kind or supplies in a manner other than sale.

Q3. Will a not-for-profit entity be liable to tax (if registered under GST) on any supplies affected by it – e.g., sale of assets received as donation?

Ans. Yes, it would be liable to tax on value as may be determined under section 15, for the said sale of donated assets.

Q4. Is the levy under reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods and services by virtue of *Notification No. 4/2017-Central Tax (Rate), dated 28.06.2017*, and *Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017*, for goods and services respectively.

Q5. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. Section 9(4) of the CGST Act as amended by The CGST (Amendment) Act, 2018, specifies that the tax shall be payable under reverse charge by the specified class of registered persons, in respect of supply of specified categories of goods or services or both.

9.5 MCQs

Q1. As per Section 9, which of the following would attract levy of CGST?

(a) Inter-State supplies, in respect of supplies within the State to SEZ;

(b) Intra-State supplies;

(c) Both of the above;

(d) Either of the above.

Ans. (b) Intra-State supplies

Q2. Which of the following forms of supply are included in Schedule I?

(a) Permanent transfer of business assets on which input tax credit has been claimed

(b) Agency transactions for services

(c) Barter

(d) None of the above

Ans. (a) Permanent transfer of business assets on which input tax credit has been claimed

Q3. Who can notify a transaction to be supply of 'goods' or 'services'?

(a) CBIC

(b) Central Government on the recommendation of GST Council

(c) GST Council

(d) None of the above

Ans. (b) Central Government on the recommendation of GST Council

Statutory Provision

10. Composition levy

*(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed *fifty lakh rupees, may opt to pay, [45][in lieu of the tax payable by him under sub-section (1) of section 9, an amount calculated at such rate] as may be prescribed, but not exceeding,—*

*(a) **one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,*

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[40] Substituted for "in lieu of the tax payable by him, an amount calculated at such rate" vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

**The limit has been increased to 1.5 crore vide Notification No.-14/ 2019-CT, dt. 07.03.2019*

***Rate reduced from 1% to 0.5% w.e.f. 01.01.2018 vide Notification No.-1/ 2018-CT, dt. 01.01.2018*

(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and

(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,

subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding [46][one crore and fifty lakh rupees], as may be recommended by the Council.

[47] [*Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher*.]

[48]["*Explanation.– For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory*."]

(2) The registered person shall be eligible to opt under sub-section (1), if: —

(a) [49][save as provided in sub-section (1), he is not engaged in the supply of services];

(b) he is not engaged in making any supply of goods [50][or services] which are not leviable to tax under this Act;

(c) he is not engaged in making any inter-State outward supplies of goods [51][or services];

(d) he is not engaged in making any supply of [52][~~goods [or]~~ services] through an

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[46] Substituted vide The CGST (Amendment) Act, 2018 notified through Notf No. 02/2019-CT dt. 29.01.2019, w.e.f. 01.02.2019. Before substitution, it read as "one crore rupees".

[47] Inserted vide The CGST (Amendment) Act, 2018 notified through Notf No. 02/2019-CT dt. 29.01.2019, w.e.f. 01.02.2019.

[48] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020.

**** The words "half per cent. of the turnover of taxable supplies of goods" substituted in place of the words "half per cent, of the turnover" w.e.f. 01.01.2018 vide Notf No.-1/ 2018-CT, dt. 01.01.2018.*

[49] Substituted for "(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II save as provided in sub-section (1), he is not engaged in the supply of services." vide The CGST (Amendment) Act, 2018 notified through Notification No. 02/2019-CT dt. 29.01.2019, w.e.f. 01.02.2019.

[50] Inserted vide Finance Act, 2020 w.e.f. 01.01.2021 vide Notf No.-92/2020-CT dt. 22.12.2020

[51] Inserted vide Finance Act, 2020 w.e.f. 01.01.2021 vide Notf No.-92/2020-CT dt. 22.12.2020

[52] The words "goods or" omitted by The Finance Act, 2023, notified through Notf No. 28/2023-CT dt. 31.07.2023, w.e.f. 01.10.2023.

electronic commerce operator who is required to collect tax at source under section 52; [53]*[***]*

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the [54]*[Council; and]*

(f) [55]*[he is neither a casual taxable person nor a non-resident taxable person:]*

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

[56]*[(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—–*

(a) *engaged in making any supply of goods or services which are not leviable to tax under this Act*;

(b) *engaged in making any inter-State outward supplies of goods or services*;

(c) *engaged in making any supply of* [57]*~~[goods or]~~ services through an electronic commerce operator who is required to collect tax at source under section 52*;

(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and

(e) *a casual taxable person or a non-resident taxable person*:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered

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[53] *The word "and" omitted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No.1/2020-CT, dt. 01.01.2020*

[54] *Substituted for "Council" vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020*

[55] *Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01. 2020 vide Notf No. 1/2020-CT, dt. 01.01.2020*

[56] *Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020*

[57] *The words "goods or" omitted by The Finance Act, 2023 notified through Notf No. 28/2023-CT dt. 31.07.2023, w.e.f. 01.10.2023.*

person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.]

(*3*) *The option availed of by a registered person under sub-section (1) [58][or sub-section (2A), as the case may be] shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) [59][or sub-section (2A, as the case may be)].*

(4) A taxable person to whom the provisions of sub-section (1) [60][or sub-section (2A), as the case may be] 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.

(5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) [61][or sub-section (2A), as the case may be] not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

[62][Explanation 1.—For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Explanation 2.—For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:—

(i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and

(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

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[58] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020

[59] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020

[60] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020

[61] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020

[62] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020

Extract of the CGST Rules, 2017

3. Intimation for composition levy.

(1) Any person who has been granted registration on a provisional basis under clause (b) of sub-rule (1) of rule 24 and who opts to pay tax under section 10, shall electronically file an intimation in FORM GST CMP-01, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the appointed day, but not later than thirty days after the said day, or such further period as may be extended by the Commissioner in this behalf:

Provided that where the intimation in FORM GST CMP-01 is filed after the appointed day, the registered person shall not collect any tax from the appointed day but shall issue bill of supply for supplies made after the said day.

(2) Any person who applies for registration under sub-rule (1) of rule 8 may give an option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.

(3) Any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year.

*[63][Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in **FORM GST CMP-02**, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of rule 44 upto the 31st day of July, 2020.]*

[64][(3A) Notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in FORM GST CMP-02, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall furnish the statement in FORM GST

[63] Inserted vide Notf No. 30/2020 – CT, dt. 03.04.2020 w.e.f. 31.03.2020

[64] Substituted vide Notf No.45/2017-CT, dt. 13.10.2017

ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of [65][one hundred and eighty days] from the day on which such person commences to pay tax under section 10:

Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished.]

(4) Any person who files an intimation under sub-rule (1) to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in FORM GST CMP-03, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of [66][ninety] days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.

(5) Any intimation under sub-rule (1) or sub-rule (3) or [67][sub-rule (3A)] in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

4. Effective date for composition levy.

(1) The option to pay tax under section 10 shall be effective from the beginning of the financial year, where the intimation is filed under sub-rule (3) of rule 3 and the appointed day where the intimation is filed under sub-rule (1) of the said rule.

(2) The intimation under sub-rule (2) of rule 3, shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.

***5. Conditions and restrictions for composition levy**.*

(1) The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely:-

(a) he is neither a casual taxable person nor a non-resident taxable person;

(b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3;

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[65] *Substituted for the word [ninety days] vide Notf No. 03/2018-CT, dt. 23.01.2018*

[66] *Substituted for the word [sixty] with effect from 17.08.2017 vide Notf No.-22/2017– CT, dt. 17.08.2017*

[67] *Inserted vide Notf No. 34/2017- CT. dt. 15.09.2017*

(c) *the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;*

(d) *he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;*

(e) *he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year;*

(f) *he shall mention the words —composition taxable person, not eligible to collect tax on supplies at the top of the bill of supply issued by him; and*

(g) *he shall mention the words —composition taxable person on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.*

(2) *The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.*

6. Validity of composition levy

(1) *The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and under these rules.*

(2) *The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.*

(3) *The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through electronic verification code, electronically on the common portal.*

(4) *Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.*

(5) *Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date*

of the option or from the date of the event concerning such contravention, as the case may be.

(6) Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within a period of thirty days from the date from which the option is withdrawn or from the date of the order passed in FORM GST CMP-07, as the case may be.

(7) Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

7. Rate of tax of the composition levy.

The category of registered persons, eligible for composition levy under section 10 and the provisions of this Chapter, specified in column (2) of the Table below shall pay tax under section 10 at the rate specified in column (3) of the said Table:-

[68]Sl. No.	Section under which composition levy is opted	Category of registered persons	Rate of tax
(1)	(1A)	(2)	(3)
1.	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent. of the turnover in the State or Union territory
2.	Sub-sections (1) and (2) of section 10	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent. of the turnover in the State or Union territory
3.	Sub-sections (1) and (2) of section 10	Any other supplier eligible for composition levy under	half per cent. of the turnover of taxable

[68] *Table substituted w.e.f. 01.04.2020 vide Notf No. 50/2020-CT, dt. 24.06.2020*

			sub-sections (1) and (2) of section 10	*supplies of goods and services in the State or Union territory*
	4.	*Sub-section (2A) of section 10*	*Registered persons not eligible under the composition levy under sub- sections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10*	*three per cent. of the turnover of ~~taxable~~[69] supplies of goods and services in the State or Union territory.''.*

Related provisions of the Statute

Section	Description
Section 2(6)	Definition of 'Aggregate Turnover'
Section 2(78)	Definition of 'Non-taxable supply'
Section 2(102)	Definition of 'Services'
Section 2(112)	Meaning of Turnover in a State
Section 9	Levy and collection
Section 52	Collection of tax at source

10.1 Introduction

This section provides for a registered person to opt for payment of taxes under a scheme of composition, the conditions attached thereto and the persons who are entitled, but not mandated, to make payment of tax under this scheme. The conditions, restrictions, procedures and the documentation in respect of this scheme are contained in Chapter II of the Central Goods and Service Tax Rules, 2017 from Rule 3 to Rule 7 (Composition Rules).

10.2 Analysis

Tax payment under this scheme is an option available to the taxable person. This scheme would be available only to certain eligible persons.

(a) Payment of tax: The composition scheme offers to a registered person, the option to remit taxes on the turnover as against outward supply-wise payment of taxes. In other words, the registered person opting to pay tax under the composition scheme needs

[69] *Omitted vide Corrigendum G.S.R. 412(E), dt. 25.06.2020*

only to ascertain the aggregate turnover and compute the tax thereon at a fixed rate, regardless of the actual rate of tax applicable on the said outward supply. The rates of tax prescribed in this regard are as under:

(i) In case of manufacturers (other than manufacturers of notified goods): 1% (0.5% CGST+ 0.5% SGST) of the turnover in the State/UT (Note: The rate applicable has been reduced from 2% to 1% *vide Notification No. 1/2018- Central Tax, dated 01.01.2018);*

(ii) In case of food/ restaurant services: 5% (2.5% CGST+ 2.5% SGST) of the turnover in the State/ UT *(i.e., in case of composite supply of service specified in Entry 6(b) of Schedule II)*;

(iii) In case of other suppliers: 1% (0.5% CGST+ 0.5% SGST) of the turnover in the State/ UT *(such as traders, agents for supply of goods, etc.)*

(b) Eligibility to pay tax under composition scheme: The conditions for eligibility to opt for payment of tax under the composition scheme are as follows:

(i) Registered persons having an 'aggregate turnover' as defined under Section 2(6) of the Act (i.e., aggregate of turnovers across all States under the same PAN) does not exceed the prescribed limit in the preceding financial year will be eligible to opt for payment of tax under the composition scheme. *Please refer to the discussion on aggregate turnover as explained in the definitions Chapter for a better understanding of the expression*.

Threshold For Composition Scheme (Rs. In Lacs)			
States	**Period**		
	27.06.2017 to 12.10.2017	**13.10.2017 to 31.03.2019**	**1.04.2019 till date**
Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh	50	75	75
Uttarakhand	75	100	75
Andhra Pradesh, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Punjab,	75	100	150

Rajasthan, Tamil Nadu, Telangana, Uttar Pradesh, West Bengal & Jammu and Kashmir			

In this regard, the following may be noted:

(1) The aggregate turnover of the registered person should not exceed the said prescribed limit during the financial year in which the scheme has been availed;

(2) The 'aggregate turnover' as computed for a composition taxpayer shall not include any interest income, which is earned by way of supply of services such as extending deposits, etc. where such interest or discount is exempted under the GST Law.

Central Goods and Services Tax (Amendment) Act, 2018

The threshold limit upto which the Government has powers to notify the eligibility limit for Composition levy has been increased to Rs.1.50 crores from existing Rs.1 crore.

It is effective from 1st February, 2019.

(3) Through CGST (Removal of Difficulties) *Order No. 01/2017, dated 13.10.2017,* the following is clarified:-

If a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions.

(4) The CGST (Removal of Difficulty) *Order No. 01/2019-Central Tax, dated 01.02.2019 suppressing the Order No. 01/2017* has issued the following clarifications:

WHEREAS, sub-section (1) of section 10 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the said Act) provides that-

(i) a registered person engaged in the supply of services, other than supply of service referred to in clause (b) of paragraph 6 of Schedule II to the said Act, may opt for the scheme under the said sub-section;

(ii) a person who opts for the said scheme may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II to the said Act), of value not exceeding ten per cent. of turnover in a State or Union

territory in the preceding financial year or five lakh rupees, whichever is higher;

AND WHEREAS, clause (a) of sub-section (2) of section 10 of the said Act provides that the registered person shall be eligible to opt under sub-section (1), if, save as otherwise provided in sub-section (1), he is not engaged in the supply of services;

AND WHEREAS, rendering of services as part of the savings and investment practice of business, by way of extending deposits, loans or advances, in so far as the consideration is represented by way of interest or discount, is resulting in their ineligibility for the aforesaid scheme, causing hardships to a lot of small businesses and because of that, certain difficulties have arisen in giving effect to the provisions of section 10;

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017 and in supersession of the *Central Goods and Services Tax (Removal of Difficulties) Order, 2017, No. 01/2017-Central Tax, dated the 13th October, 2017*, published in the Gazette of India, Extraordinary, vide number S.O. 3330 (E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on recommendations of the Council, hereby makes the following Order, namely:

1. Short title. ––This Order may be called the Central Goods and Services Tax (Removal of Difficulties) Order, 2019.
2. For the removal of difficulties, it is hereby clarified that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account –
   (i) for determining the eligibility for composition scheme under second proviso to sub-section (1) of section 10;
   (ii) in computing aggregate turnover in order to determine eligibility for composition scheme.

(ii) The scheme cannot be opted for during the middle of a financial year, except in the case where the person obtains registration, and opts for composition scheme at the time of applying for registration under the GST Law:

(1) **Taxable Person obtaining a new registration under GST laws:** Such option can be exercised at the time of obtaining registration under section 22 in Part B of Form GST-REG-1. Such new application may also include cases of migration from the erstwhile laws. In both cases, the option to pay tax under composition scheme shall be effective from the effective date of registration. [Refer Rule 3 of CGST Rules]

(2) **Registered person switches over to composition scheme:** A person is required to file intimation before the commencement of the financial year for which he opts to pay tax under the scheme. In such cases, the provisions of section 18(4) shall stand attracted and the registered person shall be required to file a statement containing details of stock and inward supply of goods received from un-registered persons, held in stock, on the date immediately preceding the date. Please refer to the discussion in section 18 for a better understanding.

(iii) In order to be eligible to opt for the scheme, the registered person must not be in possession of stock of goods which has been purchased from unregistered persons. In any such case, due tax ought to have been paid thereon under section 9(4);

Note: In case of migrated registrations from the erstwhile laws, the GST Law imposes an additional condition that the stock of goods held on the GST appointed day (01.07.2017) does not include any goods which have been procured in the course of inter-State trade or commerce or received from his branch/ his agent/ his principal situated outside the State or imported from a place outside India.

(iv) The registered person would **not** be eligible to effect any:

(1) Supply of [70][~~goods~~ [71][~~or~~] services] **through an e-commerce operator** who is liable to collect tax at source (TCS) – while there is no restriction on goods supplier through a portal owned and operated by the same person;

In this regard, it may be noted that the provision for TCS has been notified to be effective from 01.10.2018.

(2) Supply of **[72]non-taxable goods [or services]** i.e., alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(3) Supply of **services**, other than services specified in Para-6(b) to Schedule II or upto limit as prescribed under second proviso to Section 10(1) i.e., 10% of the of turnover in a State or Union territory in the preceding financial year or Rs. 5 lakhs, whichever is higher. In this regard, it must be noted that the Government has issued an order for the removal of difficulties to clarify that any services provided by a composition taxpayer shall not be taken into

[70] *Omitted vide The Finance Act, 2023 dt. 31.03.2023, notified through Notf. No. 28/2023 CT 31.07.2023, w.e.f. 01.10.2023 before it was read as, "goods or".*

[71] *Inserted vide The Finance Act, 2020 w.e.f. 01.01.2021.*

[72] *Inserted vide The Finance Act, 2020 w.e.f. 01.01.2021.*

account where the consideration for the said service is by way of "interest" which is exempted from tax under the GST Law.

Removal of Difficulty Order

One of the difficulties which was initially faced by such persons was that if he earns any interest income (particularly in a proprietorship firm) then that would have been deemed to be a supply against service under GST and, therefore, any registered person receiving interest income in course of furtherance of business shall be deemed to be supplying services. Thus, such registered person shall not be eligible for opting composition scheme. To overcome such difficulties an order was passed, The Central Goods and Services Tax *(Removal of Difficulties) Order No. 01/2017-Central Tax, dated 13.10.2017* to clarify as under:

"(i) it is hereby clarified that if a person supplies goods and/ or services referred to in clause (b) of Paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions specified therein.

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

Central Goods and Services Tax (Amendment) Act, 2018

A registered person under Section 10 is allowed to supply services up to a value not exceeding 10% of the turnover in a State or UT in preceding financial year or 5 lakhs, whichever is higher. This has been inserted through a proviso to Section 10.

(4) [73]**Inter-State outward supplies of goods [or services]**, including supplies to SEZ unit/ developer. Please note that this condition implies that the registered person will not be in a position to affect inter-State stock transfers to its own establishments located outside the State. It is also important to note that the condition is not limited to taxable supplies alone and extends to exempt supplies as well.

[73] *Inserted vide The Finance Act, 2020 w.e.f. 01.01.2021*

(v) **Shall not collect tax:** Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax on the outward supplies. Care must be taken when composition taxable persons are involved in supply of MRP-goods. MRP includes output tax and selling at MRP violates this condition. The impact is far more severe as the composition facility gets rejected and full output tax is liable to be paid but input tax credit (otherwise available) would not have been availed within the relevant time permitted.

(vi) **Not entitled to input tax credit:** Taxable person opting to pay tax under the composition scheme will not be eligible to claim any input tax credits.

However, if the taxable person becomes ineligible to remain under composition scheme, the taxable person will become entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under section 9. (Refer Section 18(1)(c) for the provision. A statement of stock shall be filed in Form GST ITC-01 within 30 days from the date from which the option is withdrawn or the order cancelling the composition option is passed).

(vii) The registered person must **not** be:

(1) A manufacturer of such goods as may be notified by the Government (based on the recommendations of the GST Council), in the year for which he opts for the scheme, or in the preceding financial year (E.g., Ice cream, pan masala, tobacco, aerated water). However, there is no restriction in trading of such goods, i.e., where the person has not manufactured the goods.

(2) A casual taxable person;

(3) A non-resident taxable person;

(viii) All the registrations obtained under a single PAN are also mandated to opt for payment under the composition scheme, i.e., all the registered persons under the PAN will also be mandated to comply with all the conditions mentioned above, including the business verticals having separate registrations within the same State under the same PAN. The scheme would become applicable for all the registrations and it cannot be applied for select verticals only. E.g., Say a company has the following businesses separately registered:

— Sale of mobile devices (Registered in Kerala)

— Franchisee of branded restaurant (Registered in Goa)

The scheme would be applicable for the said 2 units. The company cannot opt for composition scheme for the registration in Kerala and opt to pay taxes under the regular scheme for the registration in Goa.

(ix) The scheme will be applicable to all the outward supplies. The option of the scheme will be qua-person and not qua-class of goods – once opted it will be applicable for all supplies effected by the registered person; it must be noted that a taxable person **cannot** opt for payment of taxes under composition scheme for supply of one class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods or services.

(c) Conditions applicable on a composition supplier: Once a person has opted to pay tax under the composition scheme, the following conditions would stand attracted:

(i) Every notice or signboard in every registered place of business, displayed at a prominent place, shall carry the words "Composition taxable person";

(ii) Every bill of supply issued by the composition suppliers shall carry the declaration "Composition taxable person, not eligible to collect tax on supplies" on top of the bill;

(iii) RCM on inward supplies: The composition supplier shall be liable to make payment at the rate applicable on the supply in respect of every inward supply liable to tax under the reverse charge mechanism, regardless of the rate of tax that is applicable on him on the outward supplies affected by him. It may be noted that the value of such inward supplies would not be included in the aggregate turnover of the composition taxpayer although the liability is discharged by him on such inward supplies;

(iv) Not entitled to collect tax: The composition taxpayer is prohibited from collecting any GST/ Cess applicable on the outward supplies effected by him. Accordingly, the recipients of supply would also not be eligible to claim any credits where the inward supply is from a composition taxpayer;

(v) Not entitled to claim credit of taxes paid: The composition taxpayer is not entitled to claim credit in respect of taxes paid by him on any of the inward supplies effected by him, including inward supplies on which he pays tax under reverse charge mechanism.

(vi) A Composition supplier shall not be entitled to issue any tax invoice. However, to effect supplies of goods/ services, the supplier will have to issue "Bill of Supply" without charging any tax amount on it.

However, if the composition *taxpayer switches over to become a regular taxpayer, he will be entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under section 9 (regular taxpayer). Refer the discussion in Section 18(1)(c) for a better understanding of the provisions.*

(d) Important Note: The option to pay tax under the composition scheme will remain valid so long as the registered persons comply with all of the aforesaid conditions in (b) and

(c) above. The composition suppliers will be treated as any other registered supplier with effect from the date on which any of the said conditions cease to be complied with. The composition suppliers would not be entitled to re-enter the scheme until the expiry of the financial year.

(i) The registered person would be required to file an intimation (suo motu) for withdrawal from the scheme within 7 days of the non-compliance;

(ii) The registered person may also file an intimation if he wishes to withdraw from the scheme, before the effective date of withdrawal, and such withdrawal can be applied for anytime during the financial year.

Once granted, the eligibility would be valid unless the permission is cancelled or is withdrawn or the person becomes ineligible for the scheme.

(iii) Cancellation of permission: Where the proper officer has reasons to believe that the taxable person was not eligible to the composition scheme, the proper officer may cancel the permission (in order CMP-7) and demand the following:

(a) Differential tax and interest – viz., tax payable under the other provisions of the Act after deducting the tax paid under composition scheme;

(b) Penalty determined based on the demand provisions under Section 73 or 74.

(e) Comments specific to migration cases (transition from the erstwhile law to the GST regime): In case of migration of old registration into registration under GST, option to avail composition scheme under GST Laws can be exercised only if the goods held in stock by such taxable person, on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State, or from his agent or principal outside the State.

(i) As per rule 3(1) of the CGST Rules, in cases involving migration, there is need to exercise such option for composition in Form GST CMP-01 prior to appointed date or within 30 days after the appointed date. In this case, the option to pay tax under composition scheme shall be effective from the appointed date. This date has further been extended to 16.08.2017. Such person would be required to file stock statement under Rule 3(4) in Form GST CMP-03 within a period of 90 days (extended from 60 days to 90 days by *Notification No. 22/2017- Central Tax, dated 17.08.2017* from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf. Such date was extended further till 31.01.2018 vide *Order No. 11/ 2017-GST, dated 21-Dec-2017*).

(ii) A new sub-rule (3A) was inserted by *Notification No. 34/2017- Central Tax, dated 15.09.2017,* which has an overriding effect on provisions of sub-rule (1), (2) and (3). It may be noted that, the purpose of rule (3A) is only to enable the persons to

opt for composition scheme in the first year of GST implementation, without making them to wait up to the next financial year. This is on account of the fact that, the threshold limit for the purposes of Composition scheme u/s 10 was enhanced twice i.e., once on 27.06.2017 and then again on 13.10.2017 (*vide Notification No. 45/2017- Central Tax, dated 13.10.2017*) Hence, sub-rule (3A) would only cover cases, where the application is made prior to 31.03.2018. For all applications made during the financial year 2018-19, the matter would be governed by Rule 3(3).

10.3 Issues & Concerns

(1) An amendment of the rate applicable to the supplies effected by composition suppliers was made with effect from 01.01.2018. In this regard, attention is drawn to the rate applicable to traders which reads as follows – "half per cent of the turnover **of taxable supplies of goods** in the State or Union territory". It must be noted that the highlighted expression, more specifically, "**of taxable supplies"** is missing in the rate entries applicable to manufacturers and restaurant service providers. Therefore, the said 2 classes of persons would be liable to pay tax on the turnover in State, whether or not the supplies are exempted from tax.

10.4 FAQs

Q1. Will a taxable person be eligible to opt for composition scheme only for one out of 3 branches, duly registered?

Ans. No. Composition scheme would become applicable for all the business verticals/ registrations which are separately held by the person with same PAN.

Q2. Can composition scheme be availed if the taxable person has inter-State inward supplies?

Ans. Yes. Composition scheme is applicable subject to the condition that the taxable person does not engage in making inter-State outward supplies (subject to *Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019*), while there is no restriction on making any inter-State inward supplies.

Q3. Can the taxable person under composition scheme claim input tax credit?

Ans. No. Taxable person under composition scheme is not eligible to claim input tax credit.

Q4. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?

Ans. No. customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit.

Q5. Can composition tax be collected from customers?

Ans. No. The taxable person under composition scheme is restricted from collecting tax.

Q6. What is the threshold for opting to pay tax under the composition scheme?

Ans. The threshold for composition scheme is up to 1.50 crores of aggregate turnover in the preceding financial year and 75 lakhs in case of specific category of States.

Q7. How to compute 'aggregate turnover' to determine eligibility for composition scheme?

Ans. The methodology to compute aggregate turnover is given in Section 2(6). However, since composition scheme is applicable only to suppliers making intra-State supplies, 'aggregate turnover' means 'Value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies (except interest income as discussed above), exports of goods or services or both or inter-State supplies of a person having the same PAN (i.e., across India) excluding CGST, IGST, SGST, UGST and cess.

Q8. What does a person having the same PAN mean?

Ans. "Person having the same PAN" means all the units across India having the same PAN as is issued under the Income Tax Law.

Q9. What are the consequences, if an ineligible person opts for payment of tax under the Composition scheme?

Ans. As per section 10(5), if the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis* , apply for determination of tax and penalty.

Q10. What happens if a taxable person who has opted to pay taxes under the composition scheme crosses the threshold limit of ₹1.50 crores during the year?

Ans. In such case, from the day the taxable person crosses the threshold, the permission granted earlier is deemed to stand withdrawn, and he shall be liable to pay taxes under the regular scheme i.e., section 9, from such day.

10.6 RELEVANT CASE LAWS

1. Vaishno Associates vs. CCE, Jaipur [(2018) 91 taxmann.com 371 (New Delhi - CESTAT)]

Assessee classified activity carried out by it under category of 'works contract services' - It claimed benefit of Works Contract Composition Scheme - Adjudicating Authority denied benefit of Composition Scheme on plea that assessee had failed to file any intimation or option to department opting for payment of service tax in respect of works contract under Composition Scheme - Whether denial of benefit of Composition Scheme for sole reason for failure to file intimation prior to payment of service tax was justified - Held, no.

2. ABL Infrastructure (P.) Ltd. vs. CCE, Customs & Service Tax 2018 (11) G.S.T.L. 106 (Tri. - Mumbai)

Assessee was engaged in providing works contract service - It opted to discharge service tax liability under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 - It did not include value of material supplied by service recipient free of cost in gross value of works contract - Whether value of free supply material also be added in gross value of works contract - Held, yes.

SPECIAL SCHEME IN CASE OF INTRA-STATE SUPPLY OF GOODS OR SERVICES OR BOTH WITH TAX RATE OF 6%

The Central Government *vide Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019* has notified Composition scheme in case of **intra-State supply** of goods or services or both, at the rate along with the conditions specified below:

Description of supply	Rate (per cent)	Conditions
First supplies of goods or services or both up to an aggregate turnover of Rs. 50 lakhs made on or after the 1st day of April in any financial year, by a registered person.	3	1. Supplies are made by a registered person, (i) whose aggregate turnover in the preceding financial year was Rs. 50 lakh or below; (ii) who is **not eligible** to pay tax under sub-section (1) of section 10; (iii) who is **not engaged** in making any supply which is **not leviable to tax**; (iv) who is **not engaged** in making any **inter-State** outward supply; (v) who is neither a casual taxable person nor a non-resident taxable person; (vi) who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and (vii) who is not engaged in making supplies of: (a) Ice cream and other edible ice, whether or not containing cocoa.

		(b) Pan masala (c) Aerated water[74] (d) Tobacco and manufactured tobacco substitutes 2. Where more than one registered persons are having same PAN, central tax on supplies by all such registered persons is paid at the given rate. 3. The registered person **shall not collect any tax** from the recipient nor shall he be entitled to any credit of input tax. 4. The registered person shall issue, instead of tax invoice, a bill of supply. 5. The registered person shall mention the following words at the top of the bill of supply, namely: - 'Taxable person paying tax in terms of *Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019*, not eligible to collect tax on supplies'. 6. Liability to pay central tax at the rate of 3% on all outward supplies **notwithstanding any other notification issued** under section 9 or section 11 of said Act. 7. Liability **to pay central tax on inward supplies** on reverse charge under sub-section (3) or sub-section (4) of section 9 of said Act. Explanation: For the purposes of this notification, the expression "first supplies of goods or services or both" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the

[74] *Added through Notf No. 18/2019-CT(R) dt. 30.09.2019*

		purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

Further, *Circular No. 97/16/2019-GST, dated 5.04.2019* has been issued in order to provide Clarification regarding exercise of option to pay tax under *Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019* .

Important Note: It may be noted that while computing aggregate turnover in order to determine eligibility of a registered person to pay central tax at the rate of 3%, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

Analysis:

With effect from 1st April 2019, a new composition scheme has come into force in case of intra-State supply of goods or services or both, at the rate of 6% (3% CGST + 3% SGST) for first supplies of goods or services or both up to an aggregate turnover of Rs. 50 lakhs made on or after the 1st day of April in any financial year by a registered person subject to certain conditions.

This is an optional facility through a rate notification that is 'notwithstanding' any other rate notification issued. Therefore, the notification overrides *Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017*. As it is optional, registered person should carefully consider the conditions before opting for the same. This facility and composition scheme under section 10 operates as mutually exclusive. Thus, traders and manufacturers of goods and restaurant service providers who are eligible for composition (even if not opted) will not enter into this facility.

Eligibility to pay tax under composition scheme (*Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019*):

Supplies are made by a registered person, -

1. whose aggregate turnover in the preceding financial year was Rs. 50 lakh or below;
2. who is not eligible to pay tax under sub-section (1) of section 10;
3. who is not engaged in making any supply which is not leviable to tax;
4. who is not engaged in making any inter-State outward supply;
5. who is neither a casual taxable person nor a non-resident taxable person;
6. who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and

7. who is not engaged in making supplies of:
   - Ice cream and other edible ice, whether or not containing cocoa.
   - Pan masala
   - Tobacco and manufactured tobacco substitutes
   - [75]Aerated Water

Conditions applicable on a composition supplier: Once a person has opted to pay tax under the composition scheme, the following conditions would stand attracted-

1. Where more than one registered persons are having same PAN, central tax on supplies by all such registered persons is paid at the given rate.
2. The registered person **shall not collect any tax** from the recipient nor shall he be entitled to any credit of input tax.
3. The registered person shall issue, instead of tax invoice, a bill of supply.
4. The registered person shall mention the following words at the top of the bill of supply, namely: -

   'Taxable person paying tax in terms of *Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019*, not eligible to collect tax on supplies'.
5. Liability to pay central tax at the rate of 3% on all outward supplies **notwithstanding any other notification issued** under section 9 or section 11 of said Act.
6. Liability **to pay central tax on inward supplies** on reverse charge under sub-section (3) or sub-section (4) of section 9 of said Act.

Where any registered person who has availed input tax credit, opts to pay tax under this notification, shall pay an amount, by way of debit in the electronic credit ledger or electronic 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 as if the supply made under this notification attracts the provisions of section 18(4) of the said Act and the rules made thereunder and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

Statutory Provision

11. Power to grant exemption from tax

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

[75] *Inserted vide Notf No. 43/2019-CT, dt. 30.09.2019*

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

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

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

11.1 Introduction

This provision confers powers on the Central Government to exempt either absolutely or conditionally goods or services or both of any specified description from whole or part of the central tax, on the recommendations of the Council. It also confers power on the Central Government to exempt from payment of tax any goods or services or both, by special order, on recommendation of the Council.

11.2 Analysis

The Central or the State Governments are empowered to grant exemptions from tax, subject to the following conditions:

(i) Exemption should be in public interest;

(ii) By way of issue of notification;

(iii) On recommendation from the Council;

(iv) Absolute/ conditional exemption may be for any goods and/ or services of any specified description. In this regard, it may be noted that the exemption would be in respect of the supply and not specifically for any classes of persons. E.g., an absolute exemption could be granted in respect of supply of water. Whereas, a conditional exemption could be granted for supply of goods to canteen stores department.

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

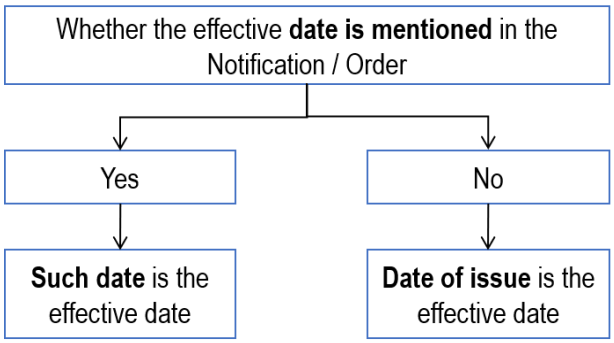
(vi) The GST Law specifies that a registered person supplying the goods and/ or services is not entitled to collect a tax higher than the effective rate, where the supply enjoys an absolute exemption.

Effective date of the notification or special order:

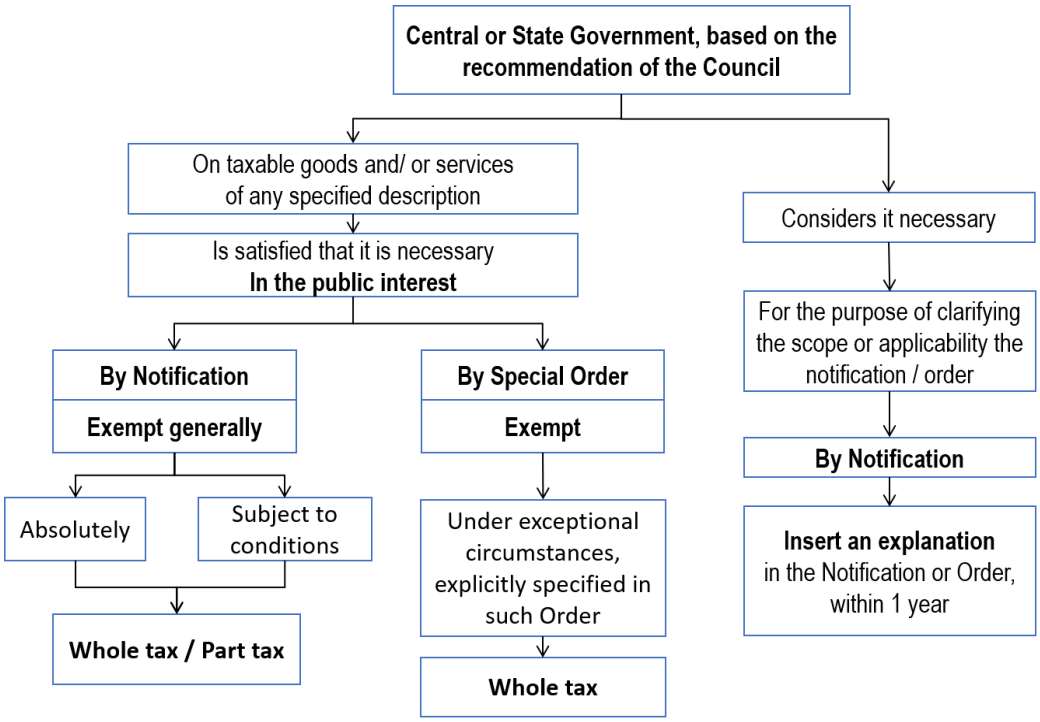
The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would be:

— Date of its issue for publication in the official gazette;

— Date on which it is made available on the official website of the Government Department.



The analysis of above provision in a pictorial form is summarised as follows:



Exemption under one GST Law and the effect on another GST Law:

An exemption issued under the CGST Act will 'automatically' exempt the same supply from the levy of tax under the SGST/ UTGST Act. This is provided under the SGST/ UTGST Act. But the converse is not necessarily applicable, that is, exemption under an SGST/ UTGST Act will not exempt levy of tax under the CGST Act.

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

Clarification on a Notification/ Special Order

The law also provides for the Government to embed a clarification to such notification or special order, by way of an "Explanation", at any time within a period of 1 year from the date of the said notification or special order. Such explanation inserted within the timelines would have a retrospective effect, viz., from the effective date of the relevant notification or special order.

Section 11 – Illustrations

1. Absolute exemption: Exemption to following taxable services from tax leviable thereon:

   - Services by way of renting of residential dwelling for use as residence to an un-registered person.*12/2017-Central Tax (Rate), dated 28.06.2017*
   - Services by a veterinary clinic in relation to health care of animals or birds.

   Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017

2. Conditional Exemption: The Central Government has exempted the tax payable under the CGST/ UTGST/ IGST Acts by any taxable person on supply of "*Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent".* However, this exemption stands withdrawn vide Notification No. 4/2022- Central Tax (Rate), dated 13.07.2022.

   Notification No.

Glimpse of notifications issued for exemption from payment of tax

Notification No.	Particulars	Comments
02/2017 - Central Tax (Rate) dated	Exempted supplies of goods in terms of section 11(1) of the CGST	The notification was issued in exercise of powers conferred

Notification No.	Particulars	Comments
28.06.2017. (As amended from time to time)	Act E.g., Electricity, Salt, fresh fruits, plastic bangles, passenger baggage etc.	u/s 11(1). The notification was made applicable w.e.f. 01.07.2017. The said notification has been amended various number of times to include as well as exclude various items from the notification.
03/2017-Central Tax (Rate) dated 28.06.2017 (As amended from time to time)	Goods specified in the List annexed required in connection with various kinds of petroleum operations undertaken are given concessional rate i.e., at the rate of 2.5% under CGST i.e., 5% IGST.	Although petroleum products are outside the purview of GST. But the notification seeks to provide a concessional rate of tax on supplies relating to petroleum operations.
07/2017-Central Tax (Rate) dated 28.06.2017	Exemption to supplies by CSD to Unit Run Canteens and supplies by CSD/ Unit Run Canteens to authorised customers	The notification came into effect w.r.e.f. 1.7.2017.
08/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted from levy of CGST under RCM on supplies received from unregistered persons. (if value of supplies does not exceed ₹ 5,000 from any or all the suppliers in a day) [Amended vide *Notification No. 38/2017, 10/2018, 12/2018, 22/2018 -Central Tax (Rate)*] However, *Notification No. 08/2017-Central Tax (Rate)* has been rescinded vide *Notification No. 1/2019-Central Tax (Rate) dated 29.1.2019*.	W.e.f. 1st April, 2019, the Central Government *vide Notification No. 7/2019- Central Tax (Rate), dated 29.03.2019*notified 3 categories of goods or services or both, in respect of which registered person shall pay tax on reverse charge basis as recipient of such goods or services or both Further, *Notification No. 24/2019- Central Tax (Rate), dated 30.09.2019* has amended *Notification No. 07/2019-Central Tax (Rate) dated 29.03.2019 w.e.f. 30.09.2019*
09/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted to supplies to a TDS deductor by an unregistered supplier	This exemption notification is not available under IGST (Rate).
10/2017 - Central Tax (Rate) dated	Exemption to Supplies of second-hand goods received by registered person dealing in buying & selling	This exemption notification is not available under IGST

Notification No.	Particulars	Comments
28.06.2017	of second hand goods from unregistered person provided the dealer pays central tax on supply of such second-hand goods as per CGST Rules	(Rate).
12/2017-Central Tax (Rate) dated 28.06.2017. (As amended from time to time)	Exemption to supply specified services under the CGST Act. Almost, all the exemptions which were available earlier under the erstwhile regime.	The notification is exempting various supply of services from GST. The notification has been amended various number of times either to include or exclude various services from the exemption.
26/2017- Central Tax (Rate) dated 21.09.2017	Exemption to supply heavy water and nuclear fuels falling in Chapter 28 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd.	The Exemption notification provided absolute exemption from whole of the tax payable.
5/2018- Central Tax (Rate) dated 25.01.2018	Exempting the Central Government's share of Profit Petroleum as defined in the contract entered into by Central government in this behalf.	
18/2017- Integrated Tax (Rate) dated 05.07.2017	Exemption from IGST to services imported by a unit/developer in Special Economic Zone (SEZ) for authorised operators	Corresponding Notification would not apply in case of intra-State supplies, given that all supplies by SEZ are inter-State supplies.

Glimpse of important Circulars on exemption from payment of tax:

Circular No.	Particulars
The CBIC *vide Circular No. 149/05/2021-GST, dated 17.06.2021*has clarified that -	*(i) Services provided to an educational institution* (Pre-schools and Schools) by way of serving of food (catering including mid-day meals) are exempt from levy of GST

	irrespective of its funding from government grants or corporate donations. *(ii) Serving of food to Anganwadi* It shall also be covered by said exemption, whether sponsored by government or through donation from corporates.
The CBIC *vide Circular No. 150/06/2021-GST, dated 17-6-2021*has clarified that -	*Access to a road or bridge* Entries 23 and 23A of *NN-12/ 2017-CT* exempt access to a road or bridge, whether the consideration are in form of toll or annuity. However, the above entries do not cover the services by way of construction of road which fall under the heading 9954 even if consideration for such construction is paid by way of instalments (annuities).
The CBIC *vide Circular No. 151/07/2021-GST, dated 17.06.2021*has clarified that -	*(i) Services by way of conduct of examination* GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution. GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc., when provided to such Boards. GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test).
The CBIC *vide Circular No. 152/08/2021-GST, dated 17.06.2021*has clarified that -	*(i) CG/ SG/ Local authority acting as public authorities* The term 'business' as per *entry no. 3(iv) of NN-11/ 2017-CT(R)* shall not include

	any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. *(ii) Civil constructions such as ropeway for tourism* Civil constructions such as rope way for tourism development is not a structure that is meant predominantly for purposes other than business so it will be covered under *entry no. 3(xii) of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017* and will attract GST at the rate of 18%
The CBIC *vide Circular No. 153/09/2021-GST, dated 17.06.2021*has clarified that -	*Supply of milling of wheat and fortification thereof* 1) Supply of milling of wheat and fortification thereof by miller, or of paddy into rice is exempt as per *entry no. 3A of NN-12/ 2017-CT(R)*, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc.) does not exceed 25% of the value of composite supply. 2) If the value of goods in the above-mentioned supply exceeds 25% of the value of composite supply, 5% rate would be applicable, if such composite supply is provided to a registered person, being a job work service (entry No. 26 of *Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017*)
The CBIC *vide Circular No. 154/10/2021-GST, dated 17.06.2021*has clarified that -	*Guaranteeing of loans by CG/ SG* It is re-iterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt as per entry no. 34A of NN-12/ 2017-CT(R)

The CBIC *vide Circular No. 155/11/2021-GST, dated 17.06.2021*has clarified that -	*Parts of sprinkler or drip irrigation system* GST rate on parts of Sprinklers or Drip Irrigation System, classifiable under the heading 8424, is 12%, even if supplied separately
The CBIC *vide Circular No. 177/09/2022-TRU, dated 3.08.2022* has *interalia* clarified applicability of exemptions on certain services- Regarding.	1) Service by way of storage or warehousing of cotton in ginned and or baled form was covered under *Entry 24B of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017* in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022. 2) It has been clarified that exemption under Sl. No. 9B of the exemption notification shall cover services associated with transit cargo both to and from Nepal and Bhutan. It has been further clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption. 3) It has been clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*. 4) In respect of query that whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST. The CBIC clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially

	payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges. Note: Even, *Circular No. 164/20/2021-GST, dated 6.10.2021* has clarified that overloading charges collected at toll plazas in the form of higher toll would get the same treatment as given to toll charges. *5)* Exemption under under Sr. No. 15(b) of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017* would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.
The CBIC *vide Circular No. 190/02/2023-GST dated 13.01.2023* has clarified that -	All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and

	Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.
The CBIC *vide Circular No. 201/12/2023-GST, dated 01.08.2023* has clarified that -	**Issue:** **1. Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism:** **Clarification:** It is clarification, services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017. **2. Whether supply of food or beverages in cinema hall is taxable as restaurant service (Para 4 (xxxii) to Notification No. 11/2017-CT(R) dated 28.06.2017)** **Clarification:** It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

	a) the food or beverages are supplied by way of or as part of a service, and b) supplied independent of the cinema exhibition service. It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

CLASSIFICATION

Introduction

Unlike Customs law, GST law does not contain a commodity classification tariff, these are contained within the notification which prescribes the rate of tax. Classification, therefore, is an exercise that is inevitable to identify the specific entry in any of the 6 schedules for determining the rate of tax on the supply of goods or services. The revenue department could object to the rate adopted or exemption claimed when the error is observed at the time of assessment, investigation or revenue audit. This could lead to multiple demands at all stages of supply and also denial of credit. The customer may object to the classification or the rate. The assessee himself may come to know of the error due to competitors using different rates, paying or not paying, attending some awareness session, reading articles, books. Errors may also come to light at the time of due diligence, internal audit, statutory audit, outsourced consultant changing, etc.

Impact of Errors in GST Classification –

Many taxpayers could suffer loss of business in period of uncertainty till proper classification is arrived at as they may have adopted some rate for their supplies since they could not afford to stop business for want of HSN. After that they may be following the same incorrect classification unless there is any objection.

The cost of errors would include the following:

1. In case of higher tax being charged, taxpayer may have to suffer the loss of orders and cost of re-establishing business with the customers, the loss of credibility with customers. The cost of discounts given to retain the customer due to incorrect rate is inevitable.
2. In the case of goods or services supplied which are nil rated or exempted, the non-availability of credit can be fatal for the business if this claim for exemption is not accurately made by the supplier. In other words, where exemption is availed

erroneously, demand for output tax will be made without any facility to allow credit that could have been availed. Similarly, where exemption is omitted to be claimed, there would be a scenario of recovery of input tax credit being ineligible from the start. Demands may be made at multiple stages of the supply chain. This is a major departure from the earlier indirect tax regime.

3. In case of short charge due to incorrect classification or claim of exemption which is not available, would result in non-recoverability of taxes from the customers and cost of interest. In business, breaking the credit chain could make business unviable.
4. Valuation methods prescribed for certain categories of goods and/ or services would be dependent on the classification of such goods and/ or services. Wrong classification would lead to wrong payment of tax.
5. On certain goods and/ or services, GST is to be discharged by the recipient of supply under reverse charge mechanism. Wrong classification may result in non-payment of tax or unnecessary payment of tax.
6. Denial of benefits under FTP such as duty drawback and incentives being provided for various goods and/ or services at varied rates can be the result of incorrect classification of goods/ services.
7. Non-payment of Compensation Cess, if any, applicable on specified goods and/ or services which may result in penal proceedings over and above the interest liability.
8. Calculating incorrect liability on import of goods/ services or not claiming the ITC (Input Tax Credit) benefit of export on goods/ services exports due to improper classification could also happen. This could happen when the alternative headings available have different import/ export criterion being applicable to them.

In case of Revenue raising the short charge or ineligible exemption issues, in addition to the above costs: the cost of penalty, denial of credit availed, cost of dispute resolution at adjudication, appeal, Court stages also would arise. It would also result in internal manpower resources getting substantially involved to resolve the issue inspite of the fact that a specialist in GST may be outsourced to prepare the reply, appearance etc.

Analysis

(i) Classification of Goods or Services:

In order to apply a particular rate of tax, one needs to determine the classification of the supply as to whether the supply constitutes a supply of goods or services or both. Once the same is determined in terms of sections 7 and 8, a further classification in terms of HSN/ SAC of goods and services has to be made so as to arrive at the rate of tax applicable to the supply. At the outset, it is important to note that HSN for goods are contained in Chapters from 1 to 98 and SAC for Services are contained as Chapter 99 notified as the 'Scheme of Classification of Services' provided as an Annexure to the Notification issued for rate of tax (CGST) applicable to services (i.e., Annexure to *Notification No. 11/ 2017-Central Tax (Rate), dated 28.06.2017*).

The Classification of Goods is older and is based on knowledge gathered from precedents on HSN classification, as an adaptation from that formulated by the World Customs Organisation. The suggested steps for determination of proper classification of goods are as under:

1. The classification of each supply has to be made separately, regardless of the form of supply (such as sale/ transfer/ disposal including by-products, scraps etc.)
2. Identify the description and nature of the goods being supplied. The Section Notes and Chapter Notes specified in the Customs Tariff would squarely apply to the Tariff Schedules under the GST Law and ought to be read as an integral part of the Tariff for the purpose of classification.
3. The 'Rules of Interpretation' of the First Schedule to the Customs Tariff Act, 1975, will apply for the purpose of classification of goods.
   (a) First step to be applied is to find the trade understanding of the terms used in the Schedule, if the meaning or description of goods is not clear.
   (b) If the trade understanding is not available, the next step is to refer to the technical or scientific meaning of the term. If the tariff headings have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding.
   (c) If none of the above is available reference may be made to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use.
4. In case of the unfinished or incomplete goods, if the unfinished goods bear the essential characteristics of the finished goods, its classification shall be the same as that of the finished goods.
5. If the classification is not ascertained as per above point, one has to look for the nature of goods which is more specific.
6. If the classification is still not determinable, one has to look for the ingredient which gives the goods its essential characteristics.

(ii) Rate of tax for goods or services

Purpose of Notification	Supply of Goods	Supply of Services
Prescribing the rate of tax	1/2017-Central Tax (Rate) *(As amended from time to time)*	11/2017-Central Tax (Rate) *(As amended from time to time)*
Granting the exemption	2/2017-Central Tax (Rate) *(As amended from time to time)*	12/2017-Central Tax (Rate) *(As amended from time to time)*

(iii) Requirement of Classification

It may seem like classification may not be so cumbersome, and tools such as experience, logic and common sense are sufficient to identify the classification, and to interpret the tariff notifications. However, a quick look at some examples would drive home the need to pay close attention to the principles of classification. Let us consider the following examples:

(1) a 'watch made of gold' – an article of gold or a watch, albeit an expensive one?

(2) a confectionary product 'hajmola' – an ayurvedic medicaments or remains confectionary sweets?

(3) surgical gloves – latex products or accessories to healthcare services?

(4) mirror cut-to-size for automobiles – article of glass or accessories to motor vehicles fitted as rear-view mirror?

As can be seen from the few instances mentioned above, classification is not one that is free from doubt. When coupled with differential rates of tax, the scope for misclassification is bound to be reinforced with motivation to either reduce the tax incidence/ or to pay a higher tax to circumvent any possible interest and penalty. Both these motivations can work on either side – industry as well as tax administration.

Approach to Classification

The notifications prescribing the rate of tax in respect of goods as well as services contain explanations as to how the classification must be undertaken. Extracts of some of those explanations are provided below for ease of reference:

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Notification No. 1/2017-Central Tax (Rate), dated 28.06.2017

4. Explanation.- For the purposes of this notification,-

(i) Goods include capital goods.

(ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed scheme of classification of services (Annexure).

(iii) The rules for the interpretation of the First Schedule to the Customs Tariff Act,1975 (51 of 1975), the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of heading 9988.

Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017

As can be seen from the above, the notification prescribing the rate of tax itself specifies the approach that is to be followed for purposes of classification, namely:

(a) In respect of goods, the notification requires reference to be made to the First Schedule to Customs Tariff Act 1975: A quick look at these would help us to recognize the approach that needs to be followed for classification.

THE CUSTOMS TARIFF ACT, 1975 (51 OF 1975)

An act to consolidate and amend the law relating to customs duties.

Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:-

1. (1) This Act may be called the Customs Tariff Act, 1975.
   (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.
2. The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules,

The above table is an adaptation of the Harmonized System of Nomenclature (HSN) established for aiding in uniformity in Customs classification in international trade between member countries of World Customs Organization. It was drafted under the aegis of Customs Cooperation Council Nomenclature, Brussels. It was adopted for Customs purposes by India in 1975 and readapted (with some changes) for Central Excise in 1985 and now for purposes of GST in 2017. Please bear in mind that reference to the original HSN would be of much help in understanding the scope of any entry to understand the full extent of meaning implied in any entry found while reading Customs Tariff Act. Refer https://www.wcoomd.org/ where the HSN is available for purchase or subscription from World Customs Organization.

(b) In respect of services, the notification requires reference to the Annexure which contains the Scheme of Classification: The Annexure is appended to the CGST rate notification and contains entries under Chapter 99 (although there is no such Chapter for services in the HSN prescribed under the Customs Law). Additionally, Explanatory Notes to such classification were issued to assist in interpretation of various entries in the Annexure to the rate notification.

(iv) In this regard, it may also be noted that the tariff entries in case of certain services refer to the rate of tax applicable to the relevant goods. In the following cases of supply of services, the rate of tax applicable as on a supply of like goods involving transfer of title in goods, would be applicable on the supply of services:

Chapter, Section or Heading	Description of Service
Heading 9971 (Financial and related services)	(ii) 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.
	(iii) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.
Heading 9973 (Leasing or rental services, without operator)	(iii) 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.
	(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.
	[76](viii) Leasing or rental services, without operator, other than (i), (ii), (iii), (iv), (vi) and (viia) above.

The only exception to the above table is leasing of motor vehicle which was purchased by the lessor prior to July 1, 2017, leased before the GST appointed date (i.e., 01.07.2017) and no credit of central excise, VAT or any other taxes on such motor vehicle had been availed by him. If all these conditions are fulfilled, then the lessor is liable to pay GST only on 65% of the GST applicable on such motor vehicle. – Refer *Notification No. 37/2017-Central Tax (Rate), dated 13.10.2017.*

(v) The Customs Tariff Act – Rules of Interpretation

The rules of interpretation contained in the Customs Tariff Act provide guidance regarding the approach to be followed for reading and interpreting tariff entries. These rules are merely summarized and listed below for convenience, whereas a detailed study of the rules is advised from commentaries and value-added updated tariff publications. Please refer to the Customs Tariff Act,1975 for full set of Rules of Interpretation.

- Rule 1: headings are for reference only and do not have statutory force for classification;
- Rule 2(a): reference to an article in an entry includes that article in CKD-SKD condition;
- Rule 2(b): reference to articles in an entry includes mixtures or combination;

[76] *Substituted vide Notf No. 20/2019-CT(R) dt. 30.09.2019*

- Rule 3(a): where alternate classification available, specific description to be preferred;
- Rule 3(b): rely on the material that gives essential character to the article;
- Rule 3(c): apply that which appears later in the tariff as later-is-better;
- Rule 4: examine the function performed that is found in other akin goods;
- Rule 5: cases-packaging are to be classified with the primary article;
- Rule 6: when more than one entry is available, compare only if they are at same level.

(vi) Role of 'Manufacture' in Classification

Classification would be well understood by applying the above rules of interpretation. Now, the process that goods are passed through can impact their classification. For example, cutting, slicing and packing pineapple in cans in sugar syrup has primary input of pineapple and the output is canned fruit with extended shelf-life. Now, the input and output are not identical, but it has been held in the case of *"Pio Food Packers"* that this is not a process amounting to manufacture. But would it be possible to regard the input and the output to retain the same classification. The answer lies in knowing the scope of each entry applicable to classification. Another example, Kraft paper used to make packing boxes may be sold as it is or after laminating them. It has been held in the case of *Laminated Packings (P) Ltd. [1990 (49) E.L.T. 326 (S.C.)]* that this process is manufacture even though the input and output fall within the same classification entry. GST Law has adopted, in section 2(72), the general understanding of manufacture that is very similar to that in Central Excise. The real test from this definition – is the input and output functionally interchangeable or not in the opinion of a knowledgeable end-user – and not based on the classification entry. Change in classification entry from one to the other, that is, classification entry for input is not the same as that of the output, could only arouse suspicion about the possibility of manufacture. Please note that 'manufacture' is included in the definition of 'business' [(in section 2(17)] but it is not included as a 'form of supply' (in section 7(1)(a) or anywhere else). Hence, the nature of the process that inputs are put through may not be manufacture but yet may appear to move the output into a different entry compared to the input. So, would change of classification entry be relevant or degree of change produced in the input due to the process carried out must be considered. With the adoption of HSN based classification from the Custom Tariff Act, it is imperative to carefully consider whether one entry has been split and sub-divided into categories even if they both carry the similar rate of tax. Hence, the key aspects to consider are:

- Identify the scope of an entry for classification of input or output
- Study the nature of process carried out on the inputs
- Examine by the 'test' (above) if result of the process is manufacture
- Now identify the classification applicable to the output

For example, is 'desiccating a coconut' a process of manufacture? If yes, the desiccated coconut ought not to be considered as eligible to the same rate of tax as coconut. Drying grains may not appear to be a process of manufacture but frying them could be manufacture as the grains are no longer 'seed grade' although it resembles the grain.

Manufacture need not be a very elaborate process. It can be a simple process but one that brings about a distinct new product – in the opinion of a knowledgeable end-use – and not just any person with no particular familiarity with the article. Manufacture need not be an irreversible process. It can be reversible yet until reversed it is recognized as a distinct new product, again, in the opinion of those knowledgeable in it. Processes such as assembly may be manufacture in relation to some articles but not in others. So, caution is advised in generalizing these verbs – assembly, cutting, polishing, etc. – but examining the degree of change produced and the identity secured by the output in the relevant trade as to the functional inter-changeability of the output with the input. If a knowledgeable end-user would accept either input or output albeit with some reservation, then it is unlikely to be manufacture. But, if this knowledgeable end-user would refuse to accept them to be interchangeable, then the process carried out is most likely manufacture. Usage of common description of the input and output does not assure continuity of classification for the two.

(vii) Role of 'Supplier Status' in Classification

This is best explained with an illustration – a restaurant buys aerated beverage on payment of GST at 28% +12% including cess and on resale of this beverage as part of food served as a combo with 'composition status' under section 10 of the CGST Act, the rate of tax on this beverage would be 5%. Therefore, it is important to note that classification can undergo a change depending upon the 'status' of the Supplier. Another illustration could be medicaments which are taxed at 5% would be exempt from tax when they are administered by the hospital to casualty/ emergency admissions and to in-patients even if billed separately in the invoice issued to patient by the hospital.

(viii) Classification for Exemptions

In GST law the exemptions are set out under section 11 of the whole of the tax payable or a part of it. In granting exemptions, it is not necessary that the exemption be made applicable to the entire entry. In other words, exemption notifications are capable of carving out a portion from an entry so as differentially alter the rate of tax applicable to goods or services within that entry. Exemptions can take any of the following forms:

- Supplier may be exempt – here, regardless of the nature of outward supply, exemption shall apply to the supplier. Conditions specified may make such exemption be applicable to the supplier but when the supplies are made to specified recipients.

Sl. No.	*Chapter, Section, Heading, Group or Service Code (Tariff)*	*Description of Services*	*Rate (per cent.)*	*Condition*
1.	*Chapter 99*	*Services by an entity registered under section 12AA [77][or 12AB] of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.*	*Nil*	*Nil*

- Supplies may be exempt – here, the supplier is not as relevant and all supplies that are notified would enjoy the exemption. Conditions specified may help to determine the supplies that are to be allowed the exemption.

27	*Heading 9971*	*Services by way of —* *(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);* *(b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.*	*Nil*	*Nil*

(ix) Role of 'Conditions' in Exemptions

It is well understood that conditions in exemption notifications tend to convert the exemption into an option, that is, the exempted/ concessional rate of tax would apply when the conditions are fulfilled and by deviating from the conditions, the full rate of tax would apply. This principle has been tested in the context of section 5A of the Central Excise Act,1944. However, a quick look at the Explanation to Section 11 of the CGST Act (reproduced below) appears to indicate that unless an express option is granted in the exemption notification, the concessional or exempted rate of tax along with attendant conditions must be availed without any discretion to opt out of it.

Explanation.––For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been

[77] *Inserted vide Notf No. 7/2021-CT (R) dt. 30.09.2021 w.e.f. 01.10.2021.*

granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

While there may be alternate views that the above explanation applies only when the exemption is 'granted absolutely' and not in all cases, such a view may find the contradiction where one entry in an exemption notification prescribes a concessional rate of tax that applies its restriction on input tax credit, while another entry in the very same notification prescribes two rates of tax where one of them enjoins restriction on input tax credit.

And the reason for resisting the view that – exemption with the condition is an option – is when the Government felt free to specify two alternate tax consequences in respect of a given entry in one case , there is no justification to make an assumption about the existence of an option even when in the very same notification that Government opted to notify only one tax consequence. Accordingly, it would be a reasonable construction that – exemption is a condition and not an option – and all Court decisions under earlier laws to the contrary are rendered otiose in view of the explanation to section 11.

Illustration below shows a style where exemption would 'not be optional':

Sl. No.	***Chapter, Section, Heading, Group or Service Code (Tariff)***	***Description of Services***	***Rate (per cent)***	***Condition***
8	*Heading 9964 (Passenger transport services)*	*(i) Transport of passengers, with or without accompanied belongings, by rail in first class or air conditioned coach.*	*2.5*	*Provided that credit of input tax charged on goods and services used in supplying the service, is not utilised for paying central tax or integrated tax on the supply of service.*
		(vii) [78][Passenger transport services other than (i), (ii), (iii), (iv), (iva), (v), (vi) and (via) above.	*9*	*-]*

[78] Substituted by Notf No. 3/2022-CT(R), dt. 13.07.2022

The following illustration is a style of drafting exemption entries that is 'not optional':

8	*Heading 9964 (Passenger transport services)*	*[79][(vi) Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.*	*2.5*	*Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle), has not been taken. [Please refer to Explanation No. (iv)]*
			6	*-]*
		(vii)[80][Passenger transport services other than (i), (ii), (iii), (iv), (iva), (v), (vi) and (via) above.	*9*	*-]*

(x) Composite Supply vs. Mixed Supply

Reference can also be made to the discussion on Composite Supply and Mixed Supply which can assist in classification of the supply into goods based on the principal supply in a transaction or that part of the transaction which carries the highest rate.

(xi) CGST (Amendment) Act, 2018

The CGST Act, 2017 has been retrospectively amended from July 1, 2017, to provide that transactions covered under Schedule II are not supplies but if they qualify as supplies then such transactions are to be 'treated' for the purpose of determining the relevant rate notification, HSN Code, Time of Supply, Place of Supply and other consequential implications.

(xii) Classification of Works Contract

Schedule II provides that works contract would be taxed as services and hence,

[79] Inserted by Notf No. 3/2022- CT(R), dt.13.07.2022 w.e.f. 18.07.2022.
[80] Substituted by Notf No. 3/2022-CT(R) dt. 13.07.2022.

irrespective of the value of goods involved in the contract, works contract would be treated as services. Works Contract has been defined at section 2(119) of the CGST Act to provide that construction, commissioning, fabrication etc. related to immovable property would only be treated as works contract. Thus, any activity related to movable property though understood as works contract under the erstwhile laws would not be treated as works contract under the GST law and will have to be classified based on the concept of composite supply.

(xiii) Conclusion

In light of the foregoing discussion, the following points of learning can be summarized:

(a) transactions involving goods are, in certain cases, required to be treated as supply of services. As such, the fundamental classification to be undertaken is the differentiation between goods and services;

(b) classification of goods and services cannot be made based on logic, experience or common sense. But recourse to rules of interpretation in the First Schedule to the Customs Tariff Act,1975 is mandatory in relation to classification of goods. And reference to the scheme of classification (contained in the annexure) is inevitable in relation to classification of services. There can be no interchange in the use of the relevant classification rules between goods and services;

(c) classification in GST requires a deep appreciation of the technical understanding of words and phrases in each domain and any urge to use the common meaning of such words and phrases must be actively discouraged. In other words, even if the common meaning of certain words and phrases appears reasonable, it must be understood that Government has deliberately and mindfully used words to give specific interpretation in the relevant trade;

(d) classification is not only required to determine the rate of tax applicable but also examine the availability of exemptions. There is no compulsion for an exemption notification to exempt correctly what is the carve out from an entry a subset of transactions – supplies or suppliers – to attract a different rate of tax;

(e) exemptions are not optional as are the conditions prescribed in respect of such exemption. Violation of the condition contracts consequences and not options. 'Absolutely exempt' does not mean 'wholly exempt' and it does not require to be 'unconditionally exempt' to be 'absolutely exempt'.

Common Errors in Classification

The errors/ deliberate action which could lead to exposure should be avoided to the extent possible. The errors would include many, some of them illustrated below:

(i) Classifying the supply for lower rate of GST without merit- This may be due to competition or due to fact that the buyer is unable to avail the credit.

(ii) Classifying the supply under higher slab to avoid dispute – Though there may not be any demand- customer may have some objection and raise a debit note in future. It may lead to higher working capital.

(iii) Classifying under wrong heading considering applicability of the same rate- This may not have any commercial impact as there is no rate difference. However, when the rate changes there may be a problem.

(iv) Classifying the supplies based on convenience of operation – This may not be advisable as it is bound to lead to disputes for self as well as the customers.

(v) Classifying the supplies incorrectly to claim of exemption – This would also be disastrous as demands if any can cripple the enterprise.

(vi) Classifying the services considering the place of supply to claim as export etc. – This can lead to – (a) demand for GST as supply is liable, (b) denial of credit due to time lapse or if longer period invoked, and (c) demand for excess refund with interest and penalties.

(vii) Similar to above classifying differently to avoid Reverse charge mechanism. – This could also lead to demand.

(viii) Classifying under residuary entry when specific entry or general entry is available.

The proper classification is the foundation to avoid disputes with customers as well as demands from the Revenue. The applicability of rates (which may change from time to time) and exemptions (have been notified and withdrawn) requires the updated knowledge as well as the information of the past changes.

11.3 Issues and Concerns

1. The law provides that tax shall not be collected at a rate higher than the effective rate of tax applicable on a supply enjoying an absolute exemption. In this regard, there is one school of thought wherein it is inferred that this provision is specific to absolute exemptions only, and in case of conditional exemptions, there is an option available to the registered supplier to collect tax from a recipient (Such a methodology, if adopted by suppliers, would imply that the requirement for input tax credit reversals under section 17(2) of the Act would not stand attracted). The other view is that the conditional exemptions are not optional but are mandatory when the conditions relating to the exemption are satisfied.

2. On similar lines, it is to be noted that the restriction imposed by law is upon the "collection" of tax. Therefore, certain registered suppliers may resort to payment of tax without collection thereof, in order to effect only taxable supplies whereby they would not be required to undergo the hassle of reversal of input taxes. However, the issue would arise as regards the documentation. A registered supplier may consider issuing a tax invoice instead of a bill of supply, against a supply that is wholly exempt, and

specifying in the tax invoice prominently, that the recipient is not required to pay the tax charged on the invoice on the basis that the supply is exempted under law. However, this practice is frowned upon, as this methodology is not entirely in compliance with the provisions of the law. It is also important to note that the GST Law casts an obligation on the supplier to prove that he has not collected taxes in such situations.

11.4 Relevance of Section 11 in GSTR-9, 9A and 9C

1. Pt. 5D of GSTR-9 requires details comprising of Taxable Value, CGST, SGST, IGST and Cess as applicable, in respect of *"Exempted Outward Supplies".*
2. Pt. 6B of GSTR-9A also requires the value of exempted, nil rated supply comprising of Turnover, Rate of Tax, CGST, SGST, IGST and Cess as applicable, in respect of *"Exempted Outward Supplies"* as declared in returns filed during the financial year.
3. Pt. 7B of GSTR-9C requires the value of Exempted, Nil Rated, Non-GST supplies, No Supply turnover.

11.5 FAQs

Q1. When exemption from whole of tax leviable on goods and/ or services has been granted unconditionally, can taxable person collect tax?

Ans. No, the taxable person providing goods and/ or services shall not collect the tax on such goods and/ or services in respect of those supplies which are notified for absolute exemptions.

Q2. Under what circumstances can a special order be issued?

Ans. The Government may in public interest, issue a special order on recommendation of GST Council, to exempt from payment of tax, any goods and/ or services on which tax is leviable. The circumstances of exceptional nature would also have to be specified in the special order.

Q3. What shall be the effective date in case of issue of notification?

Ans. The notification shall be effective from the date as mentioned in the notification. However, in case no date is mentioned in the notification the effective date shall be the date of issue of the notification.

11.6 MCQ

Q1. Which of the following can be issued by Central Government/ State Government to exempt goods and/ or services on which tax is leviable in exceptional cases?

(a) Exemption Notification

(b) Special order

(c) Other notifications

(d) None of the above

Ans. (b) Special Order

Chapter 4
Time of Supply

Sections	Rules
12. Time of supply of goods	47. Time limit for issuing tax invoice
13. Time of supply of services	
14. Change in rate of tax in respect of supply of goods or services	

Statutory Provisions

12. ***Time of supply of goods***

(1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with 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 [1][~~sub-section (1) of~~] section 31, 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 amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1.—For the purposes of clauses (a) and (b), "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 purposes 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 account 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 of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

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[1] Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

(c) *the date immediately following thirty days from the date of issue of invoice or any other document,* by whatever name called, in lieu thereof by the supplier:

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

(4) In case of supply of vouchers 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 under the provisions of sub-section (2) or sub-section (3) or sub-section (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 tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Related provisions of the Statute

Section or Rule (CGST / SGST)	Description
Section 2 (31)	Definition of 'Consideration'
Section 2 (41)	Definition of 'Document'
Section 2 (52)	Definition of 'Goods'
Section 2 (66)	Definition of 'Invoice' or 'Tax Invoice'
Section 2 (93)	Definition of 'Recipient'
Section 2 (97)	Definition of 'Return'
Section 2 (98)	Definition of 'Reverse Charge'
Section 2 (105)	Definition of 'Supplier'
Section 2 (118)	Definition of 'Voucher'
Section 7	Scope of Supply
Section 9	Levy and Collection
Section 14	Change in rate of tax in respect of supply of goods or services
Section 15	Value of taxable supply
Section 31	Tax invoice
Section 39	Furnishing of Returns

12.1 Analysis

(a) Introduction

Supply has been understood to hold the key to the incidence of GST, but it is the 'time of supply' that dictates the occasion when this incidence will come to rest. Taxable supply has been defined to mean a supply of goods and/or services which is chargeable to tax under this Act. It is interesting to note the use of the expression 'chargeable to tax' as opposed to 'leviable to tax'. It has been held that 'chargeable to tax' encompasses not only the incidence of tax but also its assessment.

The opening words in section 12(1) are very interesting and forceful as it is here that the liability to pay GST arises. The subject matter of levy – goods or services – becomes encumbered with the tax upon occurrence of the taxable event – supply. But the tax levied in terms of section 9, comes to reside only at the time determined by section 12 and 13. Accordingly, these sections play a stellar role in the imposition of GST.

The provisions state that the time of supply "shall be" and as such is a "must" to be examined closely. It signifies that "time of supply" is not a fact to be inquired by the taxable person but one that is to be admitted as the time of supply appointed by the will of legislature as declared in the section. In order to not allow any opportunity for a suggestion by the taxable person or even the tax administration as to any alternative to what could be the time of supply, the legislature retains for itself the exclusive authority to appoint the time of supply by employing the words "shall be". Therefore, the time of supply is what is stated in the law to be the time of supply and nothing else.

Invoice is commonly understood as 'proof of sale' but this common understanding is far from the truth. Invoice is a document recording the terms of an arrangement already entered. Lease agreement, as an analogy, is a document in present evidencing the agreement reached between two parties is for the lease of property for certain duration in exchange for a certain consideration. A lease arrangement verbally entered into previously when documented by an indenture or deed does not bring into existence the lease when the document is prepared. In fact, the document merely is a record of an arrangement of lease entered previously, *albeit* verbally. Verbal arrangements are no less agreements in the eyes of law. Similarly, an invoice does not bring into existence a sale agreement but merely records the terms of whatever arrangement that may have been entered into by the parties, involving the subject matter. Tax laws require the preparation of an invoice not as if the absence of an invoice defeats the levy but prescribes an unambiguous occasion when the tax may become recoverable with a proper record of the terms of the underlying arrangement. Therefore, an invoice can evidence not only a sale but every other form of supply such as transfer, barter, exchange, license, rental, lease or disposal. If issuance of an invoice is uncommon for barter or a rental arrangement, then it is to do with our own unfamiliarity and nothing to do with its impermissibility.

(b) Time of Supply – Forward Charge

Time of supply is prescribed (legislative will) to be the earlier of (a) date of issue of invoice or last date on which the invoice is required to be issued with respect to the supply and (b) date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a "tax invoice". Here, two kinds of situations are contemplated, namely:

(i) A case where the supply involves movement of goods

(ii) Any other case

Before proceeding, it is necessary to admit the concept of 'person' and 'taxable person'. Person is defined in the most familiar manner in section 2 (84) but taxable person is explained in detail in section 22 and section 25 (please refer to the relevant Chapter for a detailed discussion). A proper reading of section 22 and section 25 helps us understand – a State is the smallest registrable unit in GST – except where multiple business units are registered separately under section 25. A taxable person is, therefore, the presence of the person in a State where taxable supplies are made from in the name of such person. When a person becomes liable to be registered in a State at any place from where taxable supplies are made therein, such person shall be a taxable person.

Now, we may return to our discussion regarding the two kinds of cases that are discussed on time of supply. It is noticeable that section 31 uses two expressions – 'removal of goods' and 'movement of goods' – which are not merely expressions of distinction without a difference. There is deliberate purpose for legislating in this manner. 'Removal of goods' is defined in section 2(96) and identifies the steps that may follow once the decision to supply is made. But, 'movement of goods' is not defined and is, therefore, an attribute of the goods at the time of supply.

Illustration 1: Machine tools on display at an exhibition in Mumbai agreed to be purchased by executives of an engineering company from Indore attending the exhibition, is a case of 'supply involving movement' even though the transportation is undertaken by representatives or the purchaser on their own.

Illustration 2: In illustration 1 above, if the executives from Indore were to place an order at the same exhibition with instructions for delivery to be ensured by the exhibitor (supplier) assured within six weeks, this would also be a case of 'supply involving movement' and the transportation being organised by the supplier through an independent transport agency from the factory or exhibitor's site to the customer location.

It is for this reason that the language employed of seemingly similar or synonymous expressions – 'removal of goods' and 'movement of goods' – but demands to be supplied their separate and individual meanings and not be misled by their apparent similarity. To reiterate, 'removal of goods' is a question of fact to be examined from the steps that would ensue once the supply is decided whereas 'involves movement' is a question of the state-of-affairs of the goods being supplied.

Therefore, it is important even before the arrival of time of supply, that the goods to be supplied be classified into one of these two cases, that is, whether it is a case of supply that involves movement or one that does not involve movement of the goods. Only when this classification of the goods has been clearly made, section 31 comes into operation.

Date of invoice

Any transaction where invoice is raised before the actual movement or removal of goods or where the goods are made available to the buyer, in such cases, the date of raising invoice shall be taken as time of supply. It is possible that in such cases the delivery is taken at a later date by the buyer or is removed by the supplier at the instructions of the buyer at a date which is later than the date of raising such invoice. In such cases, we need not consider the last date of raising such invoice but we shall consider the actual date of invoice for determining the time of supply. Such cases shall include the invoices raised on the last date of the month but goods not dispatched and which are dispatched in next month. It is also important to note that supply of goods should not be part of a composite supply which is classified as supply of services by schedule II [Activities or transactions to be treated as supply of goods or supply of services] like works contract. In such case, the time of supply shall not be determined by section 12 but shall be determined by section 13 of the CGST Act.

Supply involves movement

Where the supply involves movement of goods then an invoice must be issued at the exact time when the goods are about to be removed. So, it is pertinent to identify the moment when the goods are considered to be getting removed. Section 2(96) defines removal in relation to goods as:

(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

As already explained above, movement of goods may be caused by the supplier (or his agent or transporter) or by the recipient (or his agent or transporter). When the movement is caused by the supplier, the point of removal will arise when the goods are despatched from the place of business of the supplier. The word 'despatch' means 'to send off'. So, just before the goods are to be sent off, the invoice is required to be issued where the removal is by the supplier.

Illustration 3: Mr. X in Gujarat gets an order from Mr. Y in West Bengal on 18th March 2020 for supply of refrigerators. Mr. X dispatches the goods from his premises to his transporter's premises on 20th March 2020. The transporter initiates the transportation on 22nd March 2020 and the goods finally reach the premises of Mr. Y on 26th March 2020. The removal of goods will be said to be caused on 20th March 2020 i.e., the date when the goods leave the premises of Mr. X. The last date to issue of invoice will also be 20th March 2020 in the given case.

Where the movement is by the recipient, the point of removal will arise when the goods are collected by the recipient from the premises of the supplier. This collection may be by the

recipient or a person acting on his behalf as the agent or transporter or any other person. So, the invoice is to be issued by the supplier just before the point when the recipient (or his agent or transporter) collects the goods from supplier's premises.

Illustration 4: Mr. X in Gujarat gets an order from Mr. Y in West Bengal on 18th March 2020 for supply of refrigerators. Mr. Y's transporter takes delivery of the said goods from the premises of Mr. X on 21st March 2020 and delivers them to Mr. Y on 26th March 2020. As Mr. Y's transporter collected the goods for transportation on 21st March 2020, the date of removal will be considered as 21st March 2020. The last date of issue of invoice will also be 21st March 2020 in the given case.

Illustration 5: Mr. X's manufacturing unit in Surat, Gujarat gets an order for supply of refrigerators from Mr. Y in West Bengal on 18th March 2020. It was agreed that Mr. Y's transporter will collect the goods from Mr. X's depot in Vadodara which is registered as an additional place of business under the same GSTIN as that of Surat. Mr. X removes the goods from his manufacturing unit to his depot on 20th March 2020 which reaches the depot on 21st March 2020. Mr. Y's transporter collects these goods on 23rd March 2020 and the said goods reach Mr. Y on 28th March 2020. In this illustration, the movement of goods by the supplier between his premises cannot be called as a dispatch as it is not for delivery to the customer but internal movement from factory to depot. In fact, the first leg of the activity occurring between the units of Mr. X does not entail raising of invoice as it is not a supply. The removal of goods for supply to Mr. Y will arise only when the goods are collected by the transporter of Mr. Y from Vadodara i.e. 23rd March 2020 which will also be the last date of issue of invoice as per Section 31.

Supply does not involve movement

Where the supply involves movement of goods then an invoice must be issued on or before the time when the goods are about to be removed. Where the supply does not involve movement of goods then an invoice must be issued on or before the time when:

— the goods are delivered or

— made available to the recipient.

It is in this case – where supply does not involve movement – that the complexity remains even after making a proper classification. That is, determining the time when the goods are delivered or made available to the recipient. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It only becomes easy in a contract for supply if it clearly records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from

his obligation. Therefore, in all those cases (where supply does not involve movement) the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with, to the satisfaction of the recipient. It is now that section 31 comes into operation. It is also to be noted that the phrase "supply does not involve movement" does not include transactions where goods are delivered at ex-works or at shop of the supplier. It would simply mean that risk in property has been passed but the supply of goods would still include movement, though such movement would be undertaken by the buyer or any other person.

Illustration 6: Mr. X agrees to sell his godown in Gujarat to Mr. Y on 18th March 2020. There is a separate agreement entered by Mr. X and Mr. Y for the selling of furniture within the godown on 19th March 2020. Mr. X hands over the possession of the godown and the furniture on 25th March 2020. In this case, the furniture will be considered to be delivered on 25th March 2020 which will also be the last date of issue of invoice as per Section 31.

Illustration 6A: Mr. X proposes to sell 100 Tonnes of branded rice which are packaged and stored in godown in Chennai to Mr. Y on 20th March 2023. Mr. Y agrees to purchase such goods from Mr. X on 23rd March 2023. Mr. X endorses the warehouse receipt in favour of Mr. Y on 1st April, 2023. In this case, the rice bags will be considered to be made available on 1st April 2023 which will also be the last date of issue of invoice as per Section 31.

Continuous supply of goods

As per section 2(32) of the CGST Act 2017, 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 wire, cable, pipeline or other conduit and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification specify.

From the above definition, it may be inferred that there are two important conditions to be satisfied for a supply to be called as continuous supply of goods:

(a) The supply of goods should be provided on a continuous or recurrent basis

(b) The supplier should be invoicing the recipient on a regular or periodic basis

Once, these two conditions are satisfied, any supply will be considered as continuous supply of goods. While continuous supply shall mean a supply of goods incessantly for e.g., supply of lubricating oil through pipeline, a recurring supply shall mean a supply which has a pattern of re-occurrence. Also, for e.g., supply of thirty water jars every day in an office. For the purpose of continuous supply, it is necessary that successive statement of accounts or successive payments or both are involved for the purpose of determining the consideration for such supply. As per section 31, in respect of continuous supply of goods, it has been stated that invoice should be issued before or at the time each such statement is issued, or each such payment is received. Please note that the payment referred to in the Section relates to the payment as per the contract and will not relate to any *ad hoc* advance or any other payment received out of the

terms of the agreement for continuous supply. Please also note that regularity of supply does not always imply continuous supply. Maybe each supply is complete but there is a delay in billing. That cannot become continuous supply. There must be something contingent at the time of removal / movement that can only be determined after arrival or even consumption. Deliberate delay in invoice for regular supplies does not automatically result in continuous supply. If the billing cycle coincides with tax period, there may not be many consequences of such transactions to be supply as tax does get paid timely. But, if the billing cycle is contractually longer than tax period, then care must be taken to correctly categorize as continuous supply.

Please note that 'payment' as a criterion used in the context of continuous supply CANNOT be applied where consideration is in 'non-monetary form' such as barter or exchange transactions. In such cases, where consideration is in non-monetary form and involve continuous supply, experts hold the view that the payment criterion falls apart and time of supply would need to be determined based on 'actual supply or invoice'.

Goods sent or taken on approval for sale or return basis

As per this system, certain goods are sent to the recipient without supplying/selling the same at its outset. These goods can be examined or tested by the recipient as to whether his requirements are fulfilled. The recipient can at his behest, approve the said supply or return the said goods. If the goods are returned, no supply will be deemed to have taken place. In such case, invoice is not required to be issued at the time of dispatch. The time for issuance of invoice is deferred till the goods are accepted by the buyer within a reasonable time. If the goods are approved by the recipient, then it will amount to a supply. The last date of issuance of invoice in such cases as per Section 31(7) of the CGST Act 2017 has been given as earlier of:

(a) Before or at the time of supply

(b) Six months from the date of removal

Here, time of supply refers to the time when the confirmation is given by the recipient that he is willing to accept the goods. The last date of issuance of invoice in such cases will be the confirmation of acceptance subject to the fact that this acceptance should not take place after six months from the date of removal. If the approval does not come within the time frame of six months/comes after the period of six months from the date of removal, then the last date of invoice arises on the date when this period of six months from the date of removal expires.

In this regard, vide CBIC *Circular No. 22/22/2017-GST, dated 21-12-2017,* it has been clarified by CBIC that the movement of artwork from artist to art galleries shall not be constituted as supply as the same is sent on approval basis and the supply takes place when buyer selects a particular art work displayed at the gallery. This Circular needs further clarification because in case the goods are not sold within six months from the date of removal, the invoice is required to be issued after such time to Gallery for supply of such artwork. Accordingly, there is a presumption of supply from the artist to the gallery inherent in this example. On the contrary, if the gallery is not accepting the goods on approval but for display, the above clarification shall not hold true and as gallery is acting as an agent for display and supply of goods on behalf of

the artist. In such cases, experts feel that an invoice be issued by the artist to the gallery while moving the goods to the gallery and gallery shall issue an invoice at the time of sale to the buyer. Further, valuation benefits as available under rule 29 of the CGST Rules may be availed by the artist while supplying such paintings to the gallery.

Also, vide *CBIC Circular No. 10/10/2017-GST, dated 18-10-2017* it has been clarified that where goods are moved within the State or from the State of registration to another State for supply on approval basis i.e. such goods are to be considered as being carried on approval basis and a tax invoice can be issued when the buyer has approved the goods and taken the delivery.

Unlike the case of VAT law where an invoice is required to be issued when 'transfer of property' takes place and invoice does not have to be kept pending until they are physically removed, GST requires issuance of an invoice at the time of their 'removal' or 'delivery', as the case may be, notwithstanding any delay in transfer of property. As explained earlier, an invoice does not by itself prove anything except that it is a record of the terms of understanding of the underlying transaction. Accordingly, referring back to our brief mention about 'person and taxable person', the tests requiring examination under section 31 must be administered not only in a transaction between two persons but even on all the transactions between two taxable persons even if they belong to the same person.

It is only upon undertaking a detailed enquiry into the questions of fact determined under section 31 in the respective cases, we will be able to determine one of the two elements prescribed to be the 'time of supply' under section 12. Time of supply, therefore, is earlier of date of invoice as per section 31 or date of receipt of payment with respect to the supply. Supply shall be deemed to have been made to the extent of the value of supply indicated in the invoice or the value of payment received by the supplier. Date of receipt of payment shall be the date on which the payment is accounted for in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.

Exceptions:

(i) When an amount is received in excess of tax invoice up to ₹1,000/-, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice.

(ii) **No Tax on receipt of payment in advance:** The registered person who did not opt for the composition levy under section 10 shall pay the central tax on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e. the date of issue of invoice by the supplier or the last date on which he is required, under section 31(1), to issue the invoice with respect to the supply. Therefore, no GST is payable on advances received against supply of goods. (*NN-66/2017-Central Tax dated 15-Nov-17*). Earlier by Notification No.40/2017- Central Tax dtd.13-Oct-17, this benefit was granted to only small assesses whose turnover in the preceding financial year or in the year in which he obtained registration does not exceed or is not likely to exceed ₹150 Lakhs. However subsequently the scope was enhanced to include all registered persons making supply of goods except the persons either who have opted for composition scheme under section 10 or the registered person making supply of specified actionable claims as defined in

clause (102A) of section 2 of the CGST Act, 2017 (*Notification No. 50/2023-Central Tax dt. 29-Sep-23*). Please note that the relaxation has been brought only for advance received for supply of goods and is not available for advance received for supply of services. In summary, the taxability of the consideration received in advance would be as follows:

Period	**Taxability of consideration received in advance for supply of goods except actionable claims as per section 2(102A) of the CGST Act, 2017**	
	Aggregate turnover less than ₹ 1.5 crores	**Aggregate turnover more than ₹ 1.5 crores**
01.07.2017 to 12.10.2017	Taxable	Taxable
13.10.2017 to 14.11.2017	Not taxable	Taxable
15.11.2017 and onwards	Not taxable	Not taxable

The above notifications also refer to the situations attracting the provisions of Section 14 (change in rate of tax in respect of supply of goods or services). Accordingly, the date of receipt of advances would not be relevant for the purpose of ascertaining appropriate rate of tax in case of change. In other words, the applicable rate of tax in case of change in rate of tax would be ascertained based on the date of issuance of invoice and date of supply of goods only.

(iii) The provisions relating to job-work provides for supply of capital goods / inputs to the job-worker without payment of tax (section 143). The intention of the law is not to tax capital goods / inputs sent to job-worker as supply since in such an arrangement the goods are received back by the principal. However, if such goods are not received back within three years and one year respectively, it would qualify as supply by way of operation of deeming fiction provided under section 143(3) and section 143(4). In such a scenario, the date of sending the goods to the job-worker originally would be deemed to be the date of supply of goods. It is important to understand here that the incidence of tax falls back on the date when the goods were sent to the and the operation of deeming fiction dictates the date of supply of goods as the time of supply. This would be in deviation to the general principles of ascertaining the time of supply viz., date of removal of goods on which the principal ought to have issued the invoice. In this regard, the Central Government has issued a *Circular No. 38/12/2018 dated 26.03.2018* wherein it is clarified that the principal should issue an invoice on expiry of three years / one year and should declare such supplies in the return filed for the month in which the time period of three years / one year is expired.

Illustration 7: Assuming the circumstances given under illustrations 3, 4, 5 and 6, please find the time of supply after considering the following additional information:

Actual date of issue of invoice	Date of receipt of payment	Amount received
21st March 2020	19th March 2020	5,00,000
	25th March 2020	10,00,000

Answer: Since, the date of receipt of payment will be immaterial in considering the time of supply of goods, the earlier of the two dates i.e., the last date of issue of invoice and actual date of issue of invoice will be considered as the time of supply. So, the time of supply will be as follows:

Illustrations	Last date of issue of invoice	Actual date of issue of invoice	Time of Supply
Illustration 3	20th March 2020	21st March 2020	20th March 2020
Illustration 4	21st March 2020	21st March 2020	21st March 2020
Illustration 5	23rd March 2020	21st March 2020	21st March 2020
Illustration 6	25th March 2020	21st March 2020	21st March 2020

Illustration 8: A cement manufacturing company generates certain waste materials which are supplied to a recycling factory through a pipeline on a continuous basis.

(a) Situation 1: Monthly payments of ₹ 5,00,000 are to be made by 7th of the next month as per the contract. For the period October – December, following were the date of issuance of invoices and payments:

Period	Date of issuance of invoice	Date of receipt of payment
October	4th November 2018	6th November 2018
November	6th December 2018	8th December 2018
December	9th January 2019	5th January 2019

(b) Situation 2: Monthly statement of accounts are to be prepared by 5th of the next month as per the contract. For the period October, following were the dates of issuance of the successive statement of account and the date of issuance of invoices:

Period	Date of issuance of invoice	Date of issuance of the statement of account
October	4th November 2018	6th November 2018
November	6th December 2018	3rd December 2018
December	9th January 2019	5th January 2019

Answer:

Situation 1: Where there are successive payments involved, the last date of issuance of invoice is the date of receipt of such payment. As per Section 12(2), the time of supply should be the earlier of the date of issuance of invoice or the last date of issuance of the invoice. It may be noted that as per Notification no. 66/2017-CT dated 15th November 2017, only these two events are to be considered and the date of receipt of payment as mentioned under Section 12(2)(b) may be ignored. The due date when the payment should be received is also immaterial as it has

not been specified in either the time of supply provisions or the provisions of the last date of issuance of invoice. Thereby, the time of supply in the given case will be the earlier of the date of receipt of successive payment (last date of issuance of invoice) or the actual date of issuance of invoice.

Period	Date of issuance of invoice	Date of receipt of payment	Time of supply
October	4th November 2018	6th November 2018	4th November 2018
November	6th December 2018	8th December 2018	6th December 2018
December	9th January 2019	5th January 2019	5th January 2019

Situation 2: Where there are successive statements of accounts that are to be prepared, the last date of issuance of invoice will be the date of issuance of such successive statement. As per Section 12(2), the time of supply should be the earlier of the date of issuance of invoice or the last date of issuance of the invoice. It may be noted that as per *Notification no. 66/2017-CT dated 15th November 2017*, only these two events are to be considered and the date of receipt of payment as mentioned under Section 12(2)(b) may be ignored. The due date when the successive statement should be prepared is immaterial as it has not been specified in either the time of supply provisions or the provisions of the last date of issuance of invoice. Only the actual date of the preparation of the statement needs to be considered. Thereby, the time of supply will be the earlier of the date of issuance of successive statement of account (last date of issuance of invoice) and the date of invoice.

Period	Date of issuance of invoice	Date of issuance of the statement of account	Time of supply
October	4th November 2018	6th November 2018	4th November 2018
November	6th December 2018	3rd December 2018	3rd December 2018
December	9th January 2019	5th January 2019	5th January 2019

Illustration 9: Certain goods are sent by Mr. X on sale on approval or return basis to Mr. Y on 22nd April 2019. The supply gets confirmed and invoice is issued on:

Case 1: 20th August 2019

Case 2: 22nd November 2019

Payment in each of the cases is made on 23rd November 2019.

Answer: Date of receipt of payment is immaterial for the purpose of calculating time of supply u/s 12(2) of the CGST Act 2017. So, 23rd November 2019 should be ignored altogether. The time of supply should be earlier of the date of issuance of invoice or the last date of issuance of invoice. The last date of issuance of invoice will be the earlier of the confirmation of supply or six months from the date of removal.

In case 1, the confirmation of supply occurred before 6 months from the date of removal. So, the last date of issuance of invoice was 20th August 2019. On this date, the invoice was issued. So, the time of supply will be 20th August 2019.

In case 2, the confirmation of supply happened after 6 months from the date of removal. Six months expired on 21st October 2019. So, the invoice was required to be issued by this date. Since the invoice was issued on 22nd November 2019, the actual date of issue of invoice will be considered as falling after the last date of issuance of invoice. So, the time of supply will be the last date of issuance of invoice i.e., 21st October 2019.

(c) Time of Supply – Reverse Charge

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earliest of (a) date of receipt of goods, (b) date of payment or (c) 30 days from the date of issue of invoice by the supplier. If for any reason, it is not possible to determine dates as per (a) or (b) or (c), the time of supply will be the date of recording the supply in the books of the recipient.

Keeping in mind the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section (3) or (4) of section 9 of the Act.

Reverse charge in case of goods may arise either under Section 9(3) or Section 9(4) of the CGST Act. Section 9(3) empowers the issuance of notification by the Government under which the tax will be paid by the recipient of goods as per reverse charge mechanism. Notification No. 4/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time provides the list of goods which will be subject to reverse charge mechanism subject to the category of supplier and recipient specified therein. These goods include cashew nuts (not shelled or peeled), bidi wrapper leaves (tendu), tobacco leaves, [2][essential oils other than those of citrus fruits namely Of peppermint (Mentha piperita), Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis], [3][raw cotton], silk yarn, supply of lottery, [4][Used vehicles, seized and confiscated goods, old and used goods, waste and scrap], [5][Priority Sector Lending Certificate] when supplied by specified persons.

Prior to enactment of CGST Amendment Act, section 9(4) required the recipient of taxable goods/services to pay tax if it is registered and receives inward supplies from unregistered suppliers. The applicability of which was exempted from 13th October 2017 till 31st January, 2019. However, it was applicable for intra state supplies subject to the aggregate amount of such supplies exceeding ₹ 5000 in a day from any or all unregistered suppliers and all interstate supplies without any limit till 12th October 2017. Section 9(4) has been substituted by the *Central*

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[2] *Substituted by Notf No. 14/2022-Central Tax (Rate), dated 30-12-2022, w.e.f. 1-1-2023. Prior to its substitution, Sl. No. 3A as inserted by Notification No. 10/2021-Central Tax (Rate), dated 30-9-2021, w.e.f. 1-10-2021.*

[3] *Inserted by Notf No. 43/2017-Central Tax (Rate), dated 14-11-2017, w.e.f. 15-11-2017.*

[4] *Inserted by Notf No. 36/2017-Central Tax (Rate), dated 13-10-2017, w.e.f. 13-10-2017.*

[5] *Inserted by Notf No. 11/2018-Central Tax (Rate), dated 28-5-2018, w.e.f. 28-5-2018.*

Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019. According to the new provision, Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both. In line, there are certain goods or services which are notified under the newly substituted section.

It is also pertinent to mention that in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST law vide *Notification No. 01/2019-Central Tax (Rate), dt. 29-01-2019*, reverse charge exemption notification has been rescinded.

Illustration 10: Mr.X, an agriculturist supplies raw cotton (under reverse charge) to Mr. Y who manufactures cotton shirts. The date wise turnout of events is given below:

01.04.2019- Mr.Y approaches Mr.X and places an order for 2 tonnes of cotton

10.04.2019- Mr.Y receives the goods

15.04.2019- Mr.X issues an invoice

20.04.2019- Mr.Y makes a payment by cheque and accordingly records it in his books of accounts.

25.04.2019- The payment gets debited from Mr.Y' s bank account

What will be the time of supply in the given case?

Answer: The time of supply shall be the earlier of the following dates:

a. the date of receipt of goods i.e. 10.04.2019

b. the date of payment as recorded in the books of Mr.Y i.e. 20.04.2019 or the date when the payment gets debited in the books of the recipient i.e. 25.04.2019 whichever is earlier

c. the date immediately following thirty days from the date of issue of invoice, i.e. 15.04.2019+30days+1day=16.05.2019

Therefore, the time of supply will be 10.04.2019.

(d) Time of Supply – Vouchers

The Act introduces time of supply in respect of 'vouchers' as a separate category such that the provisions relating to time of supply of goods is made inapplicable when the supply is of such vouchers. Referring to Chapter III where in the context of supply, definition of goods has been discussed at length, we find specific inclusion of 'actionable claims'.

In relation to actionable claims, Courts have held as follows:

(i) Actionable claims come within the definition of goods as generally understood.

(ii) VAT laws have deliberately excluded actionable claims from the definition of goods.

(iii) Actionable claims represent debt and accordingly carry a demand that can lawfully be made by one person against another.

(iv) Actionable claims represent property in non-physical (incorporeal) form.

But in GST, unlike VAT laws, we find that by including actionable claims within the definition of goods, they are made liable to tax. In relation to actionable claims under GST, please note the following key aspects:

(i) Actionable claims are included specifically in the definition of goods, but this inclusion is by creating "an exception from an exclusion". In other words, while excluding money and securities from the definition of goods, actionable claims have been singled out. This means such forms of actionable claims that represent property in the form of money or securities are also excluded from the definition of goods. Therefore, from a large population of actionable claims, tax is applicable only on the subset of actionable claims which do not represent property in the form of money or securities and all other forms of actionable claims representing any other property is includable in the definition of goods. A receipt for having made payment is not actionable claim because that receipt represents money and not the result of a transaction resulting in debt or demand. Similarly, promissory notes, IOU slips and all other derivatives of such instruments are also not actionable claims for the purposes of GST because of the exclusion of money from the definition.

(ii) Actionable claims which are included within the definition of goods do not become includable in the definition of services due to the accommodative and expansive language used to define services. For this reason, the property that actionable claims represent even if they are in non-physical form will continue to remain goods and not become services. Actionable claims so understood may or may not be itself in any physical form. In other words, actionable claim is not the piece of paper carrying the detailed description of the actionable claim in question but the real property, though in non-physical form, that is referred to in that piece of paper. In this digital age, piece of paper carrying the description of the actionable claim can even be present in electronic form and still retain the chart of actionable claim within the definition of goods. So, actionable claims can be in physical or electronic form as long as they represent real property.

The incidence of 'actionable claims' was limited to 'lottery, betting and gambling'. However, as per *CGST (Amendment) Act, 2023* dated 18.08.2023, brought into force w.e.f. 01.10.2023 vide *Notification No. 48/2023-CT dt. 29-Sep-2023*, section 2(102A) has been inserted to define 'specified actionable claims'. 'Specified actionable claims' mean actionable claim involved in or by way of (i) betting; (ii) casinos; (iii) gambling; (iv) horse racing; (v) lottery; or (vi) online money gaming. Further, it is important to note that vouchers are not always referring only to actionable claims. Vouchers being treated as a separate category for the purposes of determining time of supply will need to be first identified in relation to supply before applying the relevant provision regarding its time of supply. Vouchers are defined in the Act as "an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument" and examples of voucher are coupon, token, ticket, license, permit, pass.

Now, the time of supply in the case of vouchers is stated to be:

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

(ii) in all other instances, the date of redemption of the voucher.

From the above provision, it can be seen that at the time of issue of voucher, it is possible that the supply is not identifiable. So, the following key statements can be considered in this regard:

(i) Vouchers may be issued with specific or non-specific end-use;

(ii) Vouchers that are issued on payment of money will not be treated as 'vouchers' since definition of money in section 2(75) includes "instruments approved by RBI" and where such approval is obtained from RBI (under Payments and Settlement Systems Act, 2007), the treatment will be as 'money' and not as 'vouchers';

(iii) Vouchers themselves are not legal tender;

(iv) Vouchers represent some carried value or redeemable value in money terms;

(v) Vouchers are accepted as substitute for payment for a supply due to their carry value;

(vi) Vouchers are not merely receipts for pre-payment received (those would be 'money');

(vii) Vouchers must be non-cancellable such that they cannot be reconverted back into money;

(viii) Vouchers may be in physical or digital form but comprise the above characteristics.

Some key aspects of the definition are discussed here as are relevant from the perspective of section 12(4) and section 13(4).

Money [section 2(75)] may be represented as follows:

<table>
<tr><th colspan="2">Object</th><th>Purpose</th></tr>
<tr><td>Indian legal tender *</td><td>Foreign currency **</td><td rowspan="2">Used as consideration to:
➢ settle an obligation or
➢ exchange with Indian legal tender of different denomination (not held for numismatic value)</td></tr>
<tr><td colspan="2">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 RBI #</td></tr>
<tr><td colspan="3">* currency recognized by law – RBI Act, 1934 and includes currency notes and coins. Legal tender issued records liability of the Central Government and a guarantee to its holder to secure value-in-exchange</td></tr>
<tr><td colspan="3">** legal tender of other countries recognized by India. Does not include securities denominated in foreign currency</td></tr>
<tr><td colspan="3"># stored value instrument known as Pre-Paid Instrument (PPI) issued by a licensee under Payment and Settlement Systems Act, 2007</td></tr>
</table>

Money is therefore that which is 'used as' consideration between parties to a transaction. A person who has money has an asset which represents a certain amount of value. There is requirement to specially prescribe 'terms of use' of money. It is known and is declared by the law that recognizes money to be legal tender. Money includes all 'stored value' instruments approved by RBI or PPIs. Value is stored in PPIs by transfer of Indian legal tender in cash or from bank account and any balance of stored value in PPIs can be withdrawn in ATM or retransferred back into bank account. PPIs are of three types – closed, semi-closed and open PPIs. There are two other kinds of hybrids where existing banking license-holders along with a technology partner can issue PPI-like stored-value products which operate as a specie of savings bank account of the PPI-holder or beneficiary. PPIs can be physical bearer instruments as paper certificate or plastic card. PPIs can also be non-physical in the form of a digital wallet. Both represent stored value which is linked to a bank account of the beneficiary. PPIs are not to be misunderstood with Payments Bank. PPIs have more restrictions than a Payments Bank which is a scaled-down version of a regular savings bank account.

Please also note that the Government has passed the Payment and Settlement Systems Act, 2007 ('PSS Act') and accordingly, not everyone is permitted to issue instruments that may be used as a Payment System. RBI was expected to make major changes to the circulars issued in terms of the PSS Act by June 2017 but the framework or principles borrowed from the current circulars for the purposes of GST is expected to remain unaltered although changes may come in areas of governance, ease of doing business and inclusive growth in e-payment offerings through these Pre-Paid Instruments or PPIs. (refer RBI *Circular No.RBI/DPSS/2017-18/58 dated 11 Oct, 2017*)

Description	Prepaid Payment Instruments (PSS Act, 2007)			Co-branded hybrid PPIs (7.4)	
	Closed	Semi-closed	Open	Semi-closed	Limited Open
Parties involved					
Issuer	Merchant	NBFC/Company	Bank	NBFC/Company	Bank
Brand	Issuer	Issuer	Issuer	Co-branded	Co-branded
Holder of PPI	Consumer	Consumer	Consumer	Consumer	Consumer
PPI usage	Issuer outlet only	Pre-defined outlets	Any or ATM	Any (or ATM)	Any (or ATM)
Description of PPI					
Card type	Physcial only	e-Card only	Any	e-Card only	Any
Payment type (2.1)	Acceptance	Settlement	Settlement	Settlement	Settlement
Reload allowed	No	Yes	Yes	Yes	Yes
Is as 'payment system'	No (2.4)	Yes	Yes	Yes	Yes
Regulatory prescriptions					
RBI approval	Required	Required	Authorization	Required	Gen. permission
Stored value < Rs.100,000/-	Not allowed (7.1)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)
Stored value < Rs.50,000/-	OVD (7.2-ii) *	OVD (7.2-ii) *	Full KYC (7.2-iii)	OVD (7.2-ii) *	Full KYC (7.2-iii)
Stored value < Rs.10,000/-	ID only (7.2-i)	ID only (7.2-i)	Full KYC (7.2-iii)	ID only (7.2-i)	Full KYC (7.2-iii)
** Officially valid document as per rule 2(d) of PML Rules, 2005*					
Cashflow / custody-flow steps					
Stored value paid by	Consumer	Consumer	Consumer	Consumer	Consumer
Stored value paid to	Issuer-merchant	Issuer	Issuer-bank	Issuer	Issuer-bank
Held as	Trade advance	Trade advance	Deposit	Trade advance	Deposit
Held with (8.2 & 8.3)	Any bank (escrow)	Any bank (escrow)	Issuer-bank	Any bank (escrow)	Issuer-bank
Held for (8.3-vii)	Issuer-merchant	Issuer	Consumer	Issuer	Consumer
Interest bearing account	No (8.3-xii)	No (8.3-xii)	Yes	No (8.3-xii)	Yes
'Lien or charge' of unspent value	Consumer	Consumer	No (8.2)	Consumer	No (8.2)
'Lien or charge' of spent value	Merchant	Merchant	Merchant	Merchant	Merchant
Unspent value stored (10.2 & .3)	Lapse & forfeit	Exhausts	Withdraw	Exhausts	Withdraw
Additional restrictions					
Resident of India	Yes	Yes	Any	Yes	Any
Non-commercial user	Yes	Yes	Any	Any	Any
Currency	INR only (6.3)	INR only (6.3)	Any (4.1)	INR only (6.3)	Any (4.1)
User verfication	Nil (bearer use)	PIN-based	PIN-OTP	PIN-OTP-Others	PIN-OTP-Others

Source: Circular RBI/2014-2015/105 DPSS.CO.PD.PPI.No.3/02.14.006/2014-15 dated July 1, 2014 (updated as on Dec 3, 2014); relevant para references in brackets.

Voucher 2(118) may be represented as follows:

Object	Description
Instrument with obligation	Created by contract between private Parties
Value represented	As per terms of use
Stored value	Nil, only value of obligation admitted
Obligor (person liable to discharge admitted obligation)	Issuer or other name obligor
Parties involved	3 or more parties – supplier, receiver and obligor

Voucher is therefore 'instrument with obligation' that is accepted as consideration. Voucher does not contain any 'stored value' but 'value-to-use'. This 'value-to-use' is credited into a voucher by a contractual arrangement between the issuer-redeemer of the voucher. A customer who redeems the voucher is not a party to the arrangement for creation of the voucher. A voucher that is created changes hands through steps with a sliding-scale of discounts until it is redeemed at the face value. This 'value-to-use' at the time of it's creating necessarily involves flow of

payment from the issuer to the redeemer as such voucher represent cash/cash equivalent received in advance entailing an obligation. But this value-to-use, cannot be converted to cash but only expended or redeemed as per terms of use of voucher. There is no regulation governing issue, transfer and redemption of vouchers except terms of a lawful contract. Vouchers are not PPIs and hence not governed by Payments and Settlement Systems Act, 2007. It is not uncommon for the available balance of 'value-to-use' to be credited into the digital wallet of a PPIs issued by the same issuer. But the difference is that the part of the wallet balance representing stored value can be withdrawn but not the part of the wallet balance representing value-to-use or voucher. Gift voucher issued by a merchant that is a bearer certificate with a unique identification number or code is not a voucher that agrees with this definition because this gift voucher is a close-ended PPI.

Another similar product is 'loyalty points' which also contains 'value-to-use' but the difference is that in loyalty points, issuer-redeemer is the same person. Loyalty points issued represents liability of the issuer towards the beneficiary without any underlying flow of payment and is best described as 'future discount'. That is, these points accrue in one transaction and based on some conversion ratio, that can be redeemed as a discount in a subsequent transaction. As the loyalty points are non-transferable where the issuer-redeemer is the same person, it is not an instrument with obligation. Discount allowed in the subsequent transaction is towards cancellation of points accrued from the earlier transaction. Similar to vouchers, loyalty points also do not have any regulation governing its allotment and redemption except the terms of a lawful contract. Nowadays, it is seen that the liability that accumulated loyalty points represents, are being converted into voucher by transfer of liability by issuer to an intermediary at a discounted value. From here onwards, due to intermediary's involvement, an instrument comes into existence with an obligation which is voucher.

Yet another product coupon or token in the form of a 'code', where a customer becomes entitled to discount at the very first purchase by citing this 'code'. It is interesting to note that entitlement to this code though not flowing from a transaction in the past, it is an entitlement by accepting to enter into a transaction in the future. This acceptance is recorded by registering on a website, downloading an app or any other positive act on the part of the customer. Such codes also do not satisfy the requirements of a voucher for the same reasons as applicable to loyalty points.

Among all these lies another transaction that may appear to overlap with definition of voucher, due to the words of common understanding being used interchangeably with words having specific statutory meaning and that is 'Pass'. Pass is one which could be an entry pass or customer's pass or a free ticket. For example, a ticket to a cricket match is available for ₹1,000/- but a company buys these tickets and distributes it to key customers as 'free pass'. It allows the customer to enjoy the cricket match without paying anything for the same. But the company has already paid the ticket price to the organizers of the cricket match. Another example could be free pass to view screening of a film and so on. There is a normal taxable supply between the supplier of goods or services and the person who pays and buys the 'pass'. There is another

supply to be examined, between the person who pays and the person who actually enjoys the goods or services. Whatever may be the conclusions reached regarding the two transaction here, there is no voucher that comes into existence even if such entry tickets are even designated as 'free pass – not for sale' and so on. However, if such 'passes' are printed and distributed out of the ordinary course of ticket sales without reference to a specific event but permitting access to a basket of events and valid for a duration of time, then it partakes the character of voucher – instrument with obligation. When the 'Pass' loses its character as an 'advance paid' for a supply in future – whether to the Payer or any other bearer – and becomes an 'instrument with obligation', then the 'Pass' becomes a voucher.

Criteria	Money	Voucher	Loyalty Points
Instrument type	Indian legal tender, foreign currency or stored value PPI of cash paid	Physical card / non-physical account of cash received	Points-statement of accrued discount from past transactions
Beneficiary	Bearer of cash or account-holder of PPI	Bearer or account-holder	Account-holder
Represents cash deposited	Yes, paid by Beneficiary *	Yes, paid by third party Issuer *	No, notional credit of loyalty points
Paid value = Face value on redemption	Yes, no discount and no premium	No, discounted value is paid by redemption of face value	NA
Paid value refundable	Yes, stored-value	No, only value-to-use	NA, discount-to-claim
Transferrable	No	Yes	Yes **
Issuer is redeemer	Yes	No	Yes
Redemption by	Bearer	Bearer	Account-holder
Unredeemed value	Continues	Loss to issuer	Lapse
Governing law	PSS Act	Contract Act	Contract Act

** includes nominee of bearer-instruments*

*** becomes voucher on transfer of accumulated points before redemption*

Illustrations:

Illustration	Voucher or Not	Nature of Instrument
Shopping gift card purchased for ₹5,000/-	Not voucher	It's money, by way of 'stored value' even if not encashable
Coupons or token given to customer by pizza outlet on making purchase of ₹1,000/- which allows 10% discount on next purchase	Not voucher	It is future discount by way of 'value-to-use' not encashable

Money deposited into digital wallet	Not voucher	It's money, by way of 'stored value' though encashable
Points credited into digital wallet	Not voucher	It is future discount by way of 'value-to-use' not encashable
Transfer of liability towards accumulated loyalty points credited to customers	Voucher	Now it's become an 'instrument with obligation'
Pre-paid instruments: ➢ Telephone calling card / recharge card ➢ Multi-currency traveller's card ➢ DTH recharge card	Not voucher	Its money received in advance to be settled by making supplies in future
Non-instrument based advances: ➢ Receipt issued to customer for acknowledging advance payment received towards PO issued ➢ Advance booking of film ticket ➢ Train ticket purchased in advance ➢ Contribution of instalments into 'gold savings scheme' ➢ Time-share in resort	Not voucher	Its money received in advance to be settled by making supplies in future

The reason why it is important to differentiate whether it is a voucher or not, is that if the instrument is money then tax is payable on the actual 'paid-in value' and not the 'value-to-use' (or redeemable face value). For example, customer pays advance of ₹1,00,000 to distributor and the distributor transfers ₹80,000 to manufacture. GST payable by the distributor will be on ₹1,00,000 and the GST payable by the manufacturer will be on ₹80,000. Ignoring the fact that credit is not allowable, this would be the treatment in respect of any instrument that fits the definition of money. However, if a voucher was supplied by the manufacturer to the distributor of face value (or value-to-use) ₹1,00,000 but paid-in value ₹80,000, GST would be payable by the manufacturer on ₹1,00,000 and not ₹80,000. Further, anomalies arise on account of distributors liability to pay GST on ₹1,00,000 but with serious concerns on availability of credit of tax charged by manufacturer. Without satisfying conditions under section 16(2), credit would not be available and tax would be collected on face value or value-to-use and not the actual paid-in value. Payment of tax in the case of vouchers on face value or value-to-use is found in rule 32(6).

It is important to understand that a similar provision as specified in relation to time of supply of goods also exists in time of supply of services. It is reasonable to, therefore, infer that the

Government in its wisdom, in all probability, will treat 'vouchers relating to goods' and 'vouchers relating to services' as distinct and separate class of transactions. What does one understand by 'vouchers relatable to goods' and 'vouchers relatable to services'? A layman would comprehend that vouchers relatable to goods would be those class of transactions which can be exchanged for goods whereas vouchers relating to services being distinct and separate can be exchanged only for services. There can be a third class of transactions relating to vouchers, namely, a gift voucher issued by a bank which can be exchanged only for cash. But a plain reading of definition of goods and services indicates that they both exclude money. Therefore, such vouchers relatable to cash / money can be safely assumed to be outside the ambit of GST laws.

It is possible for one to construe that a voucher relating to goods can be embedded for the provision of services also. Such class of transactions must be read with Schedule II to understand whether they are to be treated as goods or as services and thereafter apply the principles laid down to the transaction as if they were goods or services. And in such situations, await until time of redemption to determine the rate of tax and class of supply.

Interesting situations arise in respect of such transactions. For instance, the points accumulated in a credit card could be used to exchange for goods or issue of an air ticket. Difficulty arises in taxing such transactions in the hands of the person issuing such points. However, the taxability or otherwise of such accumulated points would need detailed deliberations based on facts and surrounding circumstances of each case.

As discussed above, the time of supply of goods in case of supply of vouchers by a supplier will be:

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

(b) date of redemption of voucher in all other cases

This basically means that if the exact nature of goods to be supplied along with its quantity value of such goods are available when the voucher is issued, the time of supply will be the date of issue of voucher. On the other hand, if the nature of supply of goods is not available at the time of issue of voucher, then the time of supply will be considered as the date of redemption of voucher. This is not to say that the time of supply will determine the value also. This is because as per rule 32(6), the value will always be the redemption or face value of the voucher irrespective of the time of supply. There remains some important issues which are yet to be resolved in context of vouchers especially when vouchers have been given a separate place in the provisions of Time of Supply, for eg., what shall be the time of supply in case there is no redemption of such voucher made by the consumer in case of vouchers where supply is not identifiable at the time of issue of such vouchers, does time of supply would not be material at the time of redemption of vouchers against supply of goods or services, time of supply in respect of vouchers not issued by redeeming branch etc. In this regard, it may be noted that vouchers DO NOT have a separate HSN code. As such, the tariff rate is dependent on the 'redemption article' (i.e., the good or service).

(e) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

(i) where a periodical return has to be filed, the due date prescribed for such return; or

(ii) in any other case, the date of payment of the tax.

Time of supply under this residuary provision is applicable only when the other provisions are found to be inapplicable and not merely when there is some difficulty in determining the facts that are sought for by the relevant provision.

(f) Time of Supply – Special Charges

Special charges imposed for delay in payment of consideration viz., interest, late fees or penalty for delayed payment will enjoy the facility of time of supply being date of receipt of the charges imposed, that is, cash-basis of payment of GST. The various issues involved in these special charges are discussed in detail under time of supply of services which may kindly be referred. It is however, important to note that since the time of supply has been deferred to the time of receipt, even though there is an increase in the value of supply made in past date, interest is not required to be paid on such amount from the date of supply (originally).

Illustration 11: Mr. X enters into a contract for supply of goods worth ₹ 5, 00,000 with Mr. Y on 10th April 2018. Such goods are removed with an invoice dated 12th April 2018 on 13th April 2018 for delivery to Mr. Y. The terms of the contract demanded the payment against such supply to be made within 60 days beyond which a late payment charge of ₹ 10,000 will have to be paid by Mr. Y. Mr. Y makes the payment of Rs, 5,00,000 along with the late payment charges on 15th July 2018. What will be the time of supply in respect of the entire amount?

Answer: In Section 12(2), the time of supply in respect of ₹ 5, 00,000 will be the date of issuance of invoice or last date of issuance of invoice. Last date of issuance of invoice will be the date of removal where supply involves movement of goods.

Date of issuance of invoice: 12th April 2018

Last date of issuance of invoice: 13th April 2018 (date of removal)

The date of payment is immaterial as per Notification no. 66/2017-Central Tax dated 15th November 2017 as already discussed above. So, the time of supply will be 12th April, 2018 in respect of ₹ 5, 00,000.

However, in respect of the time of supply for the amount of Rs, 10,000 paid as late payment charges, time of supply as per section 12(6) has been stated to be the date on which the supplier receives the addition in value. Here, the additional amount of ₹ 10,000 is received on 15th July 2018. So, the time of supply for this amount will also arise on 15th July 2018.

Some illustrations for better understanding of the provisions of time of supply of goods:

	Concept illustrations Section 12(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before removal	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received (See Note 1)	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17
3	Advance received (See Note 2)	30-Nov-17	20-Nov-17	16-Nov-17	30-Nov-17	20-Nov-17

Notes:

1. *Notification 40/2017 dated 13.10.2017* exempts a taxable person not registered under the composition scheme and having aggregate turnover less than ₹ 1.50 crores, for payment of tax on receipt of advance. This Notification will be effective from 13.10.2017 and as such a taxable person is liable to remit tax on any advances received prior to 13.10.2017.
2. *Notification No. 66/2017 dated 15.11.2017* exempts all taxable persons from payment of tax on the advances received in relation to supply of goods. This Notification will be effective from 15.11.2017 and as such, the date of receipt of advance will not be relevant to determine the time of supply of goods thereafter.

	Supply involves movement of goods Section 12(2) r/w Section 31(1)(a)	Invoice/ document date	Removal of goods	Delivery of goods	Receipt of payment	Time of supply
4	Delayed issue of invoice	26-Oct-22	20-Oct-22	26-Oct-22	26-Oct-22	20-Oct-22
5	Inter-State stock transfer	10-Oct-22	20-Oct-22	26-Oct-22	10-Nov-22	10-Oct-22
6	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-22	10-Nov-22	14-Nov-22	20-Oct-22	30-Oct-22

	Supply otherwise than by involving movement of goods Section 12(2) r/w Section 31(1)(b)	Invoice date	Receipt of invoice by recipient	Delivery of goods	Receipt of payment	Time of supply
7	Delayed issue of invoice	30-Oct-22	05-Nov-22	26-Oct-22	10-Nov-22	26-Oct-22
8	Invoice issued prior to delivery	20-Oct-22	10-Nov-22	26-Oct-22	10-Nov-22	20-Oct-22

	Continuous supply of goods Section 12(2) r/w Section 31(4)	Invoice date	Removal of goods	Due date of payment as per agreement	Receipt of payment	Time of supply
9	Contract provides for successive statements of account/ successive payments	01-Nov-22	15-Oct-22	05-Nov-22	01-Nov-22	01-Nov-22
10			25-Oct-22			
		11-Dec-22	08-Nov-22	05-Dec-22	11-Dec-22	05-Dec-22
			30-Nov-22			
11		08-Jan-23	14-Dec-22	05-Jan-23	01-Jan-23	01-Jan-23
			23-Dec-22			

	Reverse charge Section 12(3)	Date of invoice issued by supplier	Removal of goods	Receipt of goods	Payment by recipient	Time of supply
12	Receipt of goods	31-Oct-22	31-Oct-22	20-Nov-22	30-Nov-22	20-Nov-22
13	Advance paid	31-Oct-22	31-Oct-22	20-Nov-22	05-Nov-22	05-Nov-22
14	No payment made for the supply	31-Oct-22	30-Dec-22	05-Jan-23	-	01-Dec-22

	Sale on approval basis Section 12(2) r/w Section 31(7)	Removal of goods	Issue of invoice	Accepted by recipient	Receipt of payment	Time of supply
15	Acceptance communicated within 6 months of removal	01-Nov-22	25-Nov-22	15-Nov-22	25-Nov-22	15-Nov-22

16	Amount paid to supplier before informing acceptance	01-Nov-22	25-Nov-22	15-Nov-22	12-Nov-22	15-Nov-22
17	Acceptance not communicated within 6 months of removal	01-Oct-22	15-May-23	15-May-23	02-May-23	01-Apr-23

Statutory Provisions

13. Time of supply of services

(1) *The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

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

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under [6][~~sub-section (2) of~~] section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under [7][~~sub-section (2) of~~] section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

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 amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation. —For the purposes of clauses (a) and (b)—–

(i) 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;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier 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 of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

[6] Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.
[7] Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (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 supply by 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.

(4) In case of supply of vouchers 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 under the provisions of sub-section (2) or sub-section (3) or sub-section (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 tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Related provisions of the Statute:

Section or Rule (CGST / SGST)	Description
Section 2(12)	Definition of 'Associated Enterprises'
Section 2(31)	Definition of 'Consideration'
Section 2(41)	Definition of 'Document'
Section 2(56)	Definition of 'India'
Section 2(66)	Definition of 'Invoice' or 'Tax Invoice'
Section 2(87)	Definition of 'Prescribed'
Section 2(93)	Definition of 'Recipient'
Section 2(97)	Definition of 'Return'
Section 2(98)	Definition of 'Reverse Charge'
Section 2(102)	Definition of 'Services'
Section 2(105)	Definition of 'Supplier'

Section 2(118)	Definition of 'Voucher'
Section 7	Scope of Supply
Section 9	Levy and Collection
Section 14	Change in rate of tax in respect of supply of goods or services
Section 15	Value of taxable supply
Section 31	Tax invoice
Section 39	Furnishing of returns

13.1 Analysis

(a) Time of Supply – Forward Charge

Similar to goods, time of supply of services is prescribed to be the earlier of date of issue of invoice and date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a "tax invoice". In relation to services, section 31 requires that a tax invoice be issued whether before or after provision of service. Further, there is a time limit beyond which tax invoice to be issued in arrears cannot be delayed after completion of the provision of service.

Rule 47 of the CGST Rules prescribes the time period within which such invoice should be issued. It states that in case of the taxable supply of services, invoice should be issued within 30 days from the date of supply of services. In case of insurer/banking company/financial institution/non-banking financial company, the time period becomes 45 days from the date of supply of services. When these insurer/banking/financial institution/non-banking financial institution/telecom operator companies make taxable supplies of services between distinct persons, invoice may be issued before or at the time such supplier records the same in his books of account or before expiry of the quarter during which the supply was made.

If the invoice is issued within the prescribed time period, the time of supply will be the earlier of the date of issue of invoice or the date of payment. If the invoice is issued after the prescribed time period, the time of supply will be the earlier of the date of completion of service or the date of payment. If none of these two cases are applicable, then the time of supply will be the date when the recipient shows the receipt of services in his books of accounts.

Please recollect the discussion in Chapter III where it has been explained that in accordance with Schedule II, supplies involving goods may be treated as supply of services. In all such cases, as in the case of services ordinarily understood, this provision alone applies for determination of time of supply. One may also refer to Chapter VII regarding issuance of tax invoice in all other circumstances and determine from there the fact of issuance of tax invoice.

Therefore, where the tax invoice has been issued accordingly, the time of supply can be determined to be earlier of date of issuance of such tax invoice or date of receipt of payment.

Illustration 1: Mr. X provides consultancy services to Mr. Y worth ₹ 50,000.

08.04.2018 – An advance of ₹ 10,000 is received from Mr. Y

10.04.2018 – The consultancy services are provided

16.05.2018 – Mr X receives balance payment of ₹ 40,000 and records it in his books.

What will be the time of supply assuming Mr. X issues the invoice on:

Situation 1 - 15.04.2018

Situation 2 – 15.05.2018

Answer:

Situation 1: If invoice is issued within the prescribed time period, time of supply will be the date of receipt of payment or date of issue of invoice whichever is earlier. In the given case, the invoice is issued on 15.04.2018 which is within 30 days of the supply of services which is within the prescribed period. So, for ₹ 10,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 15.04.2018 which is earlier of 15.04.2018 (date of invoice) and 16.05.2018 (date of receipt of payment).

Situation 2: If invoice is not issued within the prescribed time period, time of supply will be the earlier of the date of completion of service and the date of receipt of payment. Here, invoice is issued on 15.05.2018 which is after the prescribed time period. So, for ₹ 10,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 10.04.2018 which is earlier of 10.04.2018 (date of completion of service) and 16.05.2018 (date of receipt of payment).

Illustration 2: During investigation, it was found that Mr. X had provided catering services of ₹ 1,00,000 to Mr. Y during his business convention. The payment for these services was made in cash. Mr. X had neither issued any invoice nor recognised the payment in his books of accounts. Mr. Y recorded the payment of ₹ 1,00,000 in cash in his books on 28th April 2018. What will be the time of supply in this case?

Answer: Since, the date of receipt of payment or the date of invoice is not available in case of Mr. X, the date when the payment is recorded in the books of the recipient becomes relevant. Since, Mr. Y recorded this on 28th April, the time of supply for such supply will also be considered as 28th April 2018.

Exceptions:

(i) When an amount in excess of tax invoice is received up to ₹ 1,000/-, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice.

Illustration 3: A telephone company receives ₹ 4,000 on 27th July 2018 against an invoice of ₹ 3,700 on 23rd July 2018 in respect of the services provided. The excess amount of ₹ 300 can be adjusted against the invoice to be issued in the next month. Time of supply will arise only for ₹ 3700 on 23rd July 2018. For the balance amount of ₹ 300, the time of supply may not arise

on 27th July 2018 at the option of the supplier and may be adjusted against the next month's invoice.

(ii) Supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier.

Illustration 4: In Illustration 3, assume that the payment received was ₹ 5000 instead of ₹ 4000. Since, the amount exceeds ₹ 1000 in terms of the excess payment received, there is no option with the supplier. Here, the supply will be deemed to have been made to the extent of the invoice of ₹ 3700 on 23rd July 2018 and the balance amount of ₹ 1300 will be liable to tax on 27th July 2018.

(iii) Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.

Illustration 5: Assume that payment is recorded in the books of the supplier on 25th July 2018 and the date as per the bank statement is 27th July 2018. In this situation, the date of receipt of payment will be taken as 25th July 2018 as it will be earlier of the two events.

Continuous supply of services

As per Section 2(33) of the CGST Act 2017, 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 services as the Government may subject to such conditions, as it may, by notification, specify.

This means that there are three important conditions to be satisfied in order to be a continuous supply of services:

(a) The services should be provided continuously or on recurrent basis;

(b) The contract period should be exceeding three months;

(c) The payment obligations should be periodical.

For instance, an annual maintenance contract, construction contract etc. may be considered as continuous supply of services if the aforesaid conditions are satisfied. As stated in the context of goods, continuity of supply does not imply continuous supply. If each transaction is concluded satisfactorily, there cannot be a continuous supply. There must be something that cause the mere performance and insufficient to conclude the contractual performance of supplies. Merely delaying the invoicing cannot imply continuous supply.

The date of issuance of invoice in respect of continuous supply of services has been given under section 31(5) of the CGST Act 2017 as follows:

(I) Where the due date of payment is ascertainable from the contract, the invoice will be issued on or before the due date of payment.

(II) Where the due date of payment is not ascertainable from the contract, the invoice will be issued before or at the time when the supplier of services receives the payment.

(III) When the payment is linked to the completion of an event, the invoice will be issued on or before the date of completion of that event.

Illustration 6: Mr. X is getting construction services from a developer against buying of an under-construction flat for the period 01/07/2019 to 31/03/2020 for ₹ 150,00,000. The transactions are structured as follows:

Situation 1: Equal instalments to be paid at the end of every quarter.

Periodic completion of service	Date of Invoice	Actual payment dates	Value
30-09-2019	03-10-2019	15-10-2019	50,00,000
31-12-2019	02-12-2019	03-02-2020	50,00,000
31-03-2020	10-04-2020	20-03-2020	50,00,000

Situation 2: Payment to be made as per mutual understanding.

Periodic Completion of service	Date of Invoice	Actual payment dates	Value
31-12-2019	04-01-2020	12-01-2020	90,00,000
31-03-2020	22-04-2020	02-04-2020	60,00,000

Situation 3: 40% payment on 40% completion and balance payment on 100% completion

Periodic Completion of service	Date of Invoice	Actual payment dates	Value
01-10-2019	29-09-2019	05-10-2019	60,00,000
31-03-2020	24-04-2020	28-04-2020	90,00,000

Answer: This is a case of continuous supply of services. The first question that should be determined in these cases is whether the invoice is issued within the prescribed time period. If issued within the prescribed time period, the time of supply will be the date of issue of invoice or the date of receipt of payment whichever is earlier. If the invoice is issued after the prescribed period, then the time of supply will be the date of completion of service or the date of receipt of payment whichever is earlier.

Situation 1: In this situation, the due date of payment can be ascertainable from the contract. So, the last date of issuance of invoice will be the due date of payment. The due date of payment will be end of each quarter. So, the time of supply will be determinable as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
30-09-2019	03-10-2019	15-10-2019	50,00,000	No	30-09-2019
31-12-2019	02-12-2019	03-02-2020	50,00,000	Yes	02-12-2019
31-03-2020	10-04-2020	20-03-2020	50,00,000	No	20-03-2020

Situation 2: In this situation, due date of payment is not ascertainable from the contract. So, the invoice is to be issued before or at the time when the supplier of services receives the payment. So, the time of supply will be determinable as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
31-12-2019	04-01-2020	12-01-2020	90,00,000	Yes	04-01-2020
31-03-2020	22-04-2020	02-04-2020	60,00,000	No	31-03-2020

Situation 3: In this situation, the payment is linked to the completion of event. The invoice should be raised on or before the completion of that event (i.e., 40% or 100% completion as the case may be). So, the time of supply will be as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
01-10-2019	29-09-2019	05-10-2019	60,00,000	Yes	29-09-2019
31-03-2020	24-04-2020	28-04-2020	90,00,000	No	31-03-2020

Cessation of supply of services before the completion of the supply

As per section 31(6) of the CGST Act 2017 where the supply of services ceases before the completion of the supply, the invoice is to be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

Illustration 7: A contract for supply of professional services was entered for ₹ 5,00,000 for the period of two months on 20th July 2020. However, on 16th August 2020, the recipient informed

the supplier that he is not willing to receive any more services under the contract. Both of them mutually agree that the services provided till date can be valued at ₹ 3,50,000. The invoice for this was issued on 20th August 2020 and the payment was made by the recipient on 25th August 2020.

Answer: Here the cessation of supply of services occurs on 16th August 2020. The date by which the invoice should have been raised was also 16th August 2020. However, the invoice was issued on 20th August 2020 which is after the prescribed time period. So, the time of supply will be the earlier of the date of completion of service (16th August 2020) and the date of payment (25th August 2020) which will be 16th August 2020.

(b) Time of Supply – Reverse Charge

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earlier of date of payment or 61st day from the date of issue of invoice by the supplier. If for any reason, it is not possible to determine date as per (a) or (b) then the time of supply will be the date of recording the supply in the books of the recipient.

In case of transactions between 'associated enterprises' where the supplier of service is located outside India, the date of recording the supply in the books of the recipient or the date of payment whichever is earlier, will be the time of supply. 'Associated Enterprises has been defined in section 2(12) of CGST Act, 2017. The section defines the term as "associated enterprises" shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961 (43 of 1961).

Again, please note that in view of the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section 5 of section 9 of the Act.

Illustration 8: Mr. X provides legal services as an advocate to Mr. Y which fall under reverse charge basis.

10.04.2018 – The services are provided to Mr.Y

12.04.2018 – Mr. X issues an invoice to Mr.Y

10.07.2018 – The payment is made by Mr.Y through a cheque and recorded in his books of accounts

15.07.2018 – The payment gets debited from Mr. Y's bank account

What will be the time of supply?

Answer: The time of supply shall be earlier of the following dates:

The date of payment i.e., 10.07.2018 (earlier of 10.07.2018 and 15.07.2018)

The date immediately following sixty days from the date of issue of invoice i.e. 12.06.2018 (12.04.2018+60days+1day).

Therefore, the time of supply shall be 12.06.2018.

(c) Time of Supply – Vouchers

Please refer to discussion regarding time of supply of goods for some background discussion about actionable claims. For purposes of this discussion on time of supply of services, please note the following comments:

(i) the discussion on actionable claims being includible as vouchers is relevant vis-à-vis services for the only reason that certain transactions involving goods are deliberately treated as supply of services by Schedule II and to this extent actionable claims which are a sub-set of goods need to be referred in this Chapter;

(ii) vouchers are not entirely comprised only of actionable claims and services can also be included.

Now, the time of supply in the case of vouchers is stated to be:

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

(ii) in all other instances, the date of redemption of the voucher.

For detailed discussion on understanding of Vouchers in context of actionable claim and money, please refer Para 12.1(d) above.

When vouchers are issued for specific end-use, then they are taxable as supply provided, they otherwise satisfy the requirements of section 7 of the Act. Since, a specific provision exists in respect of time of supply of vouchers, they are singled out for the limited purposes of prescribing the time of their supply. And the rate of tax will be that applicable to goods or services they are issued in respect of or that applicable at the time of redemption. Vouchers are not merely receipts for pre-payment received because prescribing a specific time of supply would be redundant when time of supply already considers advance payments.

(d) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

(i) where a periodical return has to be filed, the due date prescribed for such return; or

(ii) in any other case, the date of payment of the tax.

(e) Time of Supply – Special Charges

Sometimes there may be charges imposed by the supplier on account of some deviation or special circumstance from the expected terms of contract on the part of the recipient. These special charges may be enabled by the contract though not necessarily attracted at the time of supply of the underlying goods or service (other than these special charges) or may be agreed later – when the special circumstance occurs. These special charges are listed as interest, late fee or penalty on account of delay in payment of consideration. In these cases, the time of supply is appointed to be the date of receipt by the supplier. It is this express provision that bring to light that (i) these special charges are not a separate supply but merely additional consideration for original supply and (ii) time of supply of these special charges would have

been the time of supply of the original supply (attracting interest liability too) but for the express mention that it will be on the date of realization, notwithstanding that a supplementary invoice or debit note is issued towards these special charges.

Further, this express provision also makes it clear that in all other cases, where a supplementary invoice or debit note is issued towards 'any other charges' (not coming within this provision) would not enjoy 'realization date' as its time of supply but continue to operate with reference to time of original supply (and hence be exposed to interest). *Bona fide* cases where additional consideration (other than such special charges) comes to light after an interval of time, perhaps even after arbitral proceedings, there does not appear to be any relief from consequential interest, although it would be much deserved and logical. As deserving merits of the case or logic do not appeal to tax legislation, present express provision only in once case (of special charges) would amount to absence of express provision in all other cases. And hence, all consequences in law would attach to any additional consideration charged after time of original supply except these special charges. Remedy in such cases would be to include 'interest cost' in the claim for additional consideration as it is not a new supply and the same reason that recipient (or arbitral panel) accepts payment of additional consideration (for original supply) must take responsibility for the belated acceptance of dues. Law cannot forego interest because of *bona fides* of the claim. Law merely follows the facts presented by parties and in case of claim of additional consideration, except these special charges, there is a delay in payment of tax on original supply and that attracts interest from a strict interpretation of law. Beneficial interpretation of law is scarcely favoured approach in interpretation of tax law. Refer also to a corresponding discussion about 'shifting' of time of supply in the context of debit note in the chapter on tax invoice under section 34.

Please note that even though a debit note may be issued after reaching agreement with the recipient about the special charges imposed, the time of supply continues to remain 'date of receipt' of payment towards such special charges. This is a departure from the provisions on accrual principle in section 31. As this is a special provision, the same will prevail over all other general provisions.

It is important to understand that due to time of supply being prescribed, whether the imposition of these special charges is itself a supply or not? Please see the following comparative discussion:

Cases	Discussion whether Special Charges 'are' supply or not
Special charges are also supply being agreeing to an act or forbear an act or to tolerate an act (Entry 5(e) of Schedule II) read with section 2(31)	There is no 'supply' in the case of interest, late fee or penalty as these special charges are a consequence of a departure from the agreed terms of contract and not in fulfilment thereof
Interest, late fee or penalty are illustrations only and such special charges by any other name would also be liable to GST but on	By accepting such an expansive interpretation, damages awarded by a Court, LD imposed in a contract, forfeiture of a EMD,

receipt-basis	etc. can become liable to GST as these are all in some way 'in the course or furtherance of business'
Special charges paid is liable to GST whether agreed before or agreed subsequently as satisfaction of the limited non-performance	Other than the three special charges listed, any other charges arising from a transaction is not liable to GST as it is not contemplated in the arrangement of supply although not imposed in all cases
Delay in payment is a primary deviation that gives rise to special charges but even deviation in time or quantity of supply can entail some other form of special charges, GST on those cannot be avoided as the these listed are only illustrative	Only 'delay in payment' gives rise to GST incidence on the special charges. Any other deviation would be a variation of contract to be independently examined if it satisfies definition of 'supply'
Special charges are 'linked' to an underlying supply (original supply) and therefore all forms of special charges would also be liable to GST	Special charges 'linked' to an original supply are liable to GST. GST cannot be imposed on special charges without an original supply

From the above discussion, several necessary conclusions need to be reached, namely:

(i) whether the three listed charges are exhaustive or only illustrative?

(ii) whether delay in payment is the only occasion when this provision is attracted or special charges imposed for any other default linked to the original supply will also attract this provision?

(iii) whether special charges imposed for any other default (not delay in payment) is liable to GST but not on receipt basis but accrual basis or are special charges for these cases not at all liable to GST?

It appears that the three listed cases are exhaustive not by the three cases listed but the circumstance for their imposition – delay in payment of consideration. So, any form of special charges imposed is liable to GST on receipt basis but only if it is due to delay in payment of consideration. Special charges imposed due to any other default by the recipient is then to be examined if it is linked to an 'original supply' or is it by itself a supply? If linked to an original supply, it is also liable to tax but not during enjoying flexibility to pay tax on receipt basis and tax being payable based on the date of debit note. If not linked to an original supply, GST would not be applicable if it does not satisfy the requirements of levy.

The issues raised in respect of special charges may be considered as matter of discussion and does not carry a procurement of an opinion on view. Readers are free to connect on these discussions and evaluate each such situation after giving it adequate consideration or thought.

Some illustrations for better understanding of the provisions of time of supply of services:

S. No.	Concept illustrations Section 13(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before completion of service	10-Oct-19	20-Oct-19	26-Oct-19	30-Oct-19	10-Oct-19
2	Advance received	30-Oct-19	20-Oct-19	10-Oct-19	30-Oct-19	10-Oct-19

	Based on due date for invoicing Section 13(2) r/w Section 31(2) r/w Rule – 47 related to invoice	Invoice date	Commencement of service	Completion of service	Receipt of payment	Time of supply
3	Delayed issue of invoice	26-Dec-19	20-Oct-19	16-Nov-19	28-Jan-20	16-Nov-19
4	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-19	30-Oct-19	30-Dec-19	30-Oct-19	30-Oct-19
					04-Dec-19	30-Oct-19

	Continuous supply of services Section 13(2) r/w Section 31(5)	Invoice date	Date as per contract	Receipt of payment	Entry of provision of services in books	Time of supply
5	Section 31(5)(a) Contract provides for payments monthly on the 10th of succeeding month	02-Nov-19	10-Nov-19	15-Nov-19	31-Oct-19	02-Nov-19
		17-Dec-19	10-Dec-19	15-Dec-19	30-Nov-19	10-Dec-19
		10-Jan-20	10-Jan-20	06-Jan-20	31-Dec-19	06-Jan-20

6	Section 31(5)(c) Contract provides for payments on completion of event. Recipient to pay within 1 month from date of completion	12-Nov-19 24-Apr-20	10-Nov-19 24-Apr-20	25-Nov-19 20-Apr-20	12-Nov-19 24-Apr-20	10-Nov-19 20-Apr-20

	Reverse charge Section 13(3)	**Date of invoice issued by supplier**	**Date of completion of service**	**Payment by recipient**	**Entry of receipt of services in recipient's books**	**Time of supply**
7	Advance paid	31-Oct-19	31-Oct-19	05-Nov-19	31-Oct-19	05-Nov-19
8	Delay in payment to vendor	31-Oct-19	31-Oct-19	10-Jan-20	31-Oct-19	31-Dec-19
9	Service received from associated enterprise located outside India (No time extension allowed)	31-Oct-19	30-Nov-19	05-Apr-20	31-Mar-20	31-Mar-20

	Issue of vouchers Section 13(4) [or Section 12(4)]	**First service/ delivery of goods**	**Issue of voucher**	**Redemption of voucher**	**Last date for acceptance of voucher**	**Time of supply**
11	Voucher issued to a recipient after supply of a service [or specific goods], for the same service - valid for 1 year	01-Nov-19	01-Nov-19	14-Dec-19	30-Oct-20	01-Nov-19
12	Voucher issued to a recipient of	01-Nov-19	01-Nov-19	14-Dec-19	30-Oct-20	01-Nov-19

	machinery along at the time of delivery, for availing repair services [or specific goods] worth ₹ 5,000 - valid for 1 year					
13	Voucher issued to a recipient after supply of a service, for any other services or goods across India, - valid for 1 year	01-Nov-19	01-Nov-19	14-Dec-19	30-Oct-20	14-Dec-19
14	Gift voucher for ₹ 1,500 for services [or goods]- valid for 6 months	-	01-Nov-19	25-Dec-19	31-Mar-20	01-Nov-19

(f) Time of Supply – Consideration involving Development Rights or Construction Service

In case of Consideration involving Development Rights or Construction Service, the time of supply is specially notified vide *Notification 4/2018 – Central Tax (R) dated 25.01.2018*, under the powers conferred by Section 148 of the CGST Act. Accordingly, the liability to pay tax in certain situations would be as below:

Situation	Event requiring payment of taxes
Registered persons supplying development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure	On transfer of possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).
Registered persons supplying construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights.	

If a registered builder supplies construction service in consideration of receiving development rights from the owner, then the liability would arise for as a continuous supply of construction service through the construction duration and completed on the date of handing over.

If a registered landowner supplies development rights in consideration of construction service received from builder, then the liability would arise for immediately upon entering into an irrevocable agreement for supply of development rights although consideration in the form of constructed area is handed over much later.

Now, where *Notification No. 4/2018-CT(R)* is applicable, the time of supply is deferred until handing over. Please note that where non-refundable deposit (NRD) is paid by builder to landowner or where landowner starts to sell apartment units (that are under construction), then the time of supply will not be deferred but get advanced to these earlier events of collection of NRD or booking agreement to end customers.

Further, where joint-development agreements are not on 'area sharing' basis but on 'revenue sharing' basis, then firstly, *Notification No. 4/2018-CT(R)* will not apply as this notification only provides deferment of time of supply when there is an exchange. And when builder is liable to pay cash (for development rights supply), time of supply will be the time when builder is put in possession of the land. Please note that the landowner does not put the builder in possession of the land again-and-again but at one-go, when the irrevocable agreement is executed and registered. As such, the supply of development rights is at the start of the project. But the credit to the builder will be subject to rule 37, that is, only to the extent payment if made by the builder for the inward supply (of development rights) by the landowner. There is one view that supply of development rights (in case of revenue sharing development) can be treated as continuous supply so that builder is entitled to credit to the extent of each payment instalment that is made. On this, no clear view is available from the tax administration but review of the concept of continuous supply and the irrevocable development agreement may throw some light. However, *Notification No. 4/2018-CT(R*) dt. 25th Jan 2018 has been amended via *Notification No. 23/2019-CT(R) dt. 30 Sep, 2019* by inserting an explanation stating that *Notification No. 4/2018-CT(R)* will not apply with respect to development rights supplied on or after 01.04.2019.

With effect from April 1, 2019, treatment to TDR/FSI and long-term lease has been amended for projects commencing after April 1, 2019. Vide *Notification No. 4/2019 – CT(R*), exemption has been granted to the supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

Further, vide *Notification No. 5/2019 – CT(R) dated 29th March, 2019* read with *Notification No. 7/2019 – CT(R) dated 29th March, 2019*, in terms of liability to pay, the liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM). Inline, vide *Notification No. 6/2019 – CT(R)*, the provisions

relating to Time of Supply have also been amended to provide that the date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate shall be earlier of the date of issue of completion certificate for the project by the competent authority or on its first occupation. However, *Notification No. 6/2019-CT(R)* as further amended by *Notification No. 3/2021-CT(R) dt. 2 June, 2021* providing builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM shall arise in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls. Also, the liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. This shall be applicable for development rights or Floor Space Index (FSI) (including additional FSI) given on or after 1st April, 2019.

Notification No. 6/2019-CT(R) dated 29th March 2019 extends the deferment of 'date for payment of tax in the case of construction service' to 'date of completion', similar to deferment extended by *Notification No. 4/2018-CT(R) dated 25th January 2018*. However, with the tax on development rights being shifted to RCM basis under *NN 4/2019-CT(R) dated 28th March 2019*, deferment under *Notification No. 6/2019-CT(R)* is applicable only in respect of construction services supplied. It must be noted that since landowner-promoter is permitted input tax credit (selling unfinished / under-construction apartments even prior to date of their completion) of the tax charged by developer-promoter on construction services (fourth *proviso to 3/2019-CT(R)),* developer-promoter is obliged to discharge tax on construction services (to the extent of apartments falling to landowner-promoter's share and offered for sale prior to date of completion) on the basis of work in progress / percentage of completion method, and deviate from the deferment (to the extent of these apartment units) in *6/2019-CT(R)* and apply the deferment only on apartment units (falling to landowner-developer's share) that are unsold on the date of completion.

Statutory Provisions

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, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely: —

(a) in case the goods or services or both 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 the change in rate of tax but 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 has been received before the change in rate of tax, but the invoice for the same is 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 or both 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 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 if such credit in the bank account is after four working days from the date of change in the rate of tax.

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

Related provisions of the Statute

Section or Rule (CGST / SGST)	Description
Section 2(66)	Definition of 'Tax Invoice' or 'Invoice'
Section 2(52)	Definition of 'Goods'
Section 2(102)	Definition of 'Services'
Section 2(105)	Definition of 'Supplier'
Section 7	Scope of Supply
Section 31	Tax invoice

14.1 Analysis

Payment of tax requires the presence of all the following events:

(i) supply of goods or services

(ii) issue of invoice

(iii) payment for the supply

When there is a change in the rate of tax during the occurrence of these 3 events, there may be

some concern about the applicability of the correct rate of tax. Section 14 addresses this aspect clearly.

Where the supply takes place after the change in the rate of tax, the time of supply may be as follows:

(a) Supply before the cut-off date-say 01-Sep-19

Supply	Invoice	Payment	Time of Supply
25.08.2019	01.09.2019	05.09.2019	01.09.2019 (Invoice or payment, whichever is earlier)
25.08.2019	26.08.2019	05.09.2019	26.08.2019 (Date of Invoice)
25.08.2019	01.09.2019	27.08.2019	27.08.2019 (Date of payment)

(b) Supply after the cut-off date-say 01-Sep-19

Supply	Invoice	Payment	Time of Supply
01.09.2019	25.08.2019	05.09.2019	05.09.2019 (Date of payment)
01.09.2019	25.08.2019	26.08.2019	25.08.2019 (Date of invoice or date of payment, whichever is earlier)
01.09.2019	02.09.2019	26.08.2019	02.09.2019 (Date of Invoice)

It is relevant to note here that the *Notification No. 66/2017-CT dated 15.11.2017* exempting a taxable person from payment of tax on advances received refers to the scenarios enumerated in section 14. This may not mean that the receipt of payment in advance should not be considered for determining the change in tax rate; since, the said notification will have limited application for ascertaining the time of supply of goods. In other words, section 12 specifies the scenarios for ascertaining time of supply whereas section 14 specifies the point of determination of appropriate rate of tax in cases where the events impacting time of supply fall in time zones having different rate of tax on such supply. This means that on application of the provisions of section 14, if the date of receipt of advance is relevant, the payment of tax may be deferred till the date of supply of goods at the rate applicable as on the date of receipt of advance (point of taxation) in pursuance of said notification.

Although supply has not yet taken place, the time of supply determined as above is valid and not in violation of the levy of GST for the following reasons:

(i) Supply is defined in section 7(1)(a) as '……made or agreed to be made…..'

(ii) Levy of GST in section 9 is on such supply, that is, 'made or agreed to be made'

Prescribing the time of supply anterior to the time of actual supply is well accommodated in the

language of the Act.

Determination of time of supply under Section 14 has been provided as under:

Supply	Invoice	Payment	Time of Supply
Before Rate Change	Before Rate Change	Before Rate Change	Not governed by Section 14
Before Rate Change	Before Rate Change	After Rate Change	Date of issue of invoice
Before Rate Change	After Rate Change	Before Rate Change	Date of receipt of payment
After Rate Change	After Rate Change	After Rate Change	Not governed by Section 14
After Rate Change	After Rate Change	Before Rate Change	Date of issue of invoice
After Rate Change	Before Rate Change	After Rate Change	Date of receipt of payment
After Rate Change	Before Rate Change	Before Rate Change	Date of receipt of payment or date of issue of invoice, whichever is earlier

Please note that in above chart, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Considering that it is more common to come across of supply of services prior to issuance of tax invoice, section 14 may operate predominantly in the context of services. Although not as common, supply of goods being permitted without invoice being issued simultaneously, section 14 does not cease to operate with respect of goods in instances dealt with in rule 55 of CGST Rules.

Further, section 14 cannot be pressed into service where issuance of invoice is deliberately (and perhaps with mala fide intentions) delayed. Section 14 is a provision that operates where contractually invoice is issued with some interval of time where there is an intervening 'change of rate' event. Where there is a deliberate omission to issue tax invoice, the date when the invoice ought to have been issued will operate to fasten tax liability. It is not acceptable that supply itself becomes uncertain due to non-issuance of tax invoice. Therefore, it is accepted that section 14 operates in normal circumstances and not in extraneous and artificial circumstances of belated invoicing as time of supply cannot be shifted 'at will' but by normal course of business.

Chapter 5
Value of Supply

Sections	Rules
15. Value of taxable supply	27. Value of supply of goods or services where the consideration is not wholly in money 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent 29. Value of supply of goods made or received through an agent 30. Value of supply of goods or services or both based on cost 31. Residual method for determination of value of supply of goods or services or both 31A. Value of supply in case of lottery, betting, gambling and horse racing. 31B. Value of supply in case of online gaming including online money gaming. 31C. Value of supply of actionable claims in case of casino. 32. Determination of value in respect of certain supplies 32A. Value of supply in cases where Kerala Flood Cess is applicable 33. Value of supply of services in case of pure agent 34. Rate of exchange of currency, other than Indian rupees, for determination of value 35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

Statutory Provisions

15. Value of taxable supply

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both 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 law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of 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 Government and State Governments.

Explanation. —For the purposes of this sub-section, 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 which is given—–

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

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

(4) Where the value of the supply of goods or services or both 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 Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation. —For the purposes of this Act, —

(a) persons shall be deemed to be "related persons" if—

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognized partners in business;

(iii) such persons are employer and employee;

(iv) 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;

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

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

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

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) 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.

Extract of the CGST Rules 2017

27. Value of supply of goods or services where the consideration is not wholly in money

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, -

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Illustration:

(1) Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.

(2) Where a laptop is supplied for forty thousand rupees along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of laptop is forty four thousand rupees.

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent

(1) [1][The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.]

[2][(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.]

[1] Re-numbered vide Notf No. 52/2023 – CT dt. 26.10.2023.
[2] Inserted through Notf No. 52/2023 – CT dt. 26.10.2023.

29. Value of supply of goods made or received through an agent

The value of supply of goods between the principal and his agent shall:

(a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety per cent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.

Illustration: A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.

(b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

30. Value of supply of goods or services or both based on cost

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

31. Residual method for determination of value of supply of goods or services or both

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

[3][31A. Value of supply in case of lottery, betting, gambling and horse racing.-

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

(2) [4][The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

[3] *Inserted vide Notf No. 03/2018 – CT dt. 23.01.2018.*
[4] *Substituted vide Notf No.08/2020 – CT dt. 02.03.2020 w.e.f. 01.03.2020.*

Explanation:– For the purposes of this sub-rule, the expressions "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.]

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator]

[5][31B. Value of supply in case of online gaming including online money gaming.–

Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.]

***[6][31C. Value of supply of actionable claims in case of casino**.–*

Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

(i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

(ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

Provided that any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Explanation.- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.]

32. Determination of value in respect of certain supplies

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.

(2) The value of supply of services in relation to the purchase or sale of foreign currency,

[5] Inserted through Notf No. 51/2023 – CT dt. 29.09.2023 w.e.f. 01.10.2023.
[6] Inserted through Notf No. 51/2023 – CT dt. 29.09.2023 w.e.f. 01.10.2023.

including money changing, shall be determined by the supplier of services in the following manner, namely:-

(a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent. of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent. of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

(b) at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be-

(i) one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;

(ii) one thousand rupees and half of a per cent. of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and

(iii) Five thousand and five hundred rupees and one tenth of a per cent. of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.

(3) The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five per cent. of the basic fare in the case of domestic bookings, and at the rate of ten per cent. of the basic fare in the case of international bookings of passage for travel by air.

Explanation.- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

(4) The value of supply of services in relation to life insurance business shall be,-

(a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;

(b) in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or

(c) in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:

Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

(6) The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

(7) The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

[7][32A. Value of supply in cases where Kerala Flood Cess is applicable

The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, but shall not include the said cess]

[7]Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019 w.e.f.01.07.2019 – Kerala Flood Cess was implemented w.e.f. 01.08.2019 for 2 years by clause 14 of Kerala Finance Act, 2019 read with Kerala Flood Cess (Second Amendment) Rules, 2019

33. Value of supply of services in case of pure agent

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration: - Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

[8][34. Rate of exchange of currency, other than Indian rupees, for determination of value

(1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs

[8] Substituted vide Notf No. 17/2017-CT dt. 27.07.2017, before it was read as,
"The rate of exchange for the determination of the value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India on the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act."

Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.

(2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.]

35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-

Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %).

Explanation.- For the purposes of the provisions of this Chapter, the expressions-

(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

(b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

Related provisions of the Statute:

Section or Rule (CGST / SGST)	Description
Section 2(1)	Definition of 'Actionable Claim'
Section 2(102A)	Definition of 'Specified Actionable Claim'
Section 2(80A)	Definition of 'Online Gaming'
Section 2(80B)	Definition of 'Online Money Gaming'
Section 2(117A)	Definition of 'Virtual Digital Asset'
Section 2(5)	Definition of 'Agent'
Section 2(17)	Definition of 'Business'
Section 2(31)	Definition of 'Consideration'

Section 2(52)	Definition of 'Goods'
Section 2(73)	Definition of 'Market value'
Section 2(93)	Definition of 'Recipient'
Section 7	Scope of 'Supply'
Section 9	Levy and Collection
Rule 27	Value of supply of goods or services where the consideration is not wholly in money
Rule 28	Value of supply of goods or services or both between distinct or related persons, other than through an agent
Rule 29	Value of supply of goods made or received through an agent
Rule 30	Value of supply of goods or services or both based on cost
Rule 31	Residual method for determination of value of supply of goods or services or both
Rule 31A	Value of supply in case of lottery, betting, gambling and horse racing
Rule 31B	Value of supply in case of online gaming including online money gaming
Rule 31C	Value of supply of actionable claims in case of casino
Rule 32	Determination of value in respect of certain supplies
Rule 32A	Value of supply in cases where Kerala Flood Cess is applicable
Rule 33	Value of supply of services in case of pure agent
Rule 34	Rate of exchange of currency, other than Indian rupees, for determination of value
Rule 35	Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

15.1. Introduction

Consideration is *quid pro quo* in a contract and price is the consideration expressed in terms of money. Value is the price prevalent when a transaction takes place under controlled conditions or specified circumstances. Valuation is the study of all those circumstances and assessment of steps to reverse or rectify the effect of contractual or other arrangements that may suppress or understate the value of the transaction.

15.2. Analysis

This section applies to both goods and services supplied for purposes of valuation of the taxable supply.

Although contained in the CGST Act, the valuation method provided in this section applies to UTGST, SGST, CGST and IGST. Valuation must be as provided exclusively in this section.

Transaction value should be taken for the purpose of valuation under GST. "Transaction value" has been explained under sub-section (1) of section 15 as the price *actually paid* or *payable* for the supply of goods and/or services or both where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply. From the phrase "for the supply", it can be gathered that there should be a clear nexus between the supply of goods or services and the amount received by the supplier of goods or services. If no linkage can be established between the price paid or payable and the supply of goods/services, the inclusion of such price in the valuation of supplies may be called into question. For this, the contractual terms and obligations of the supplier and the recipient should be examined to evaluate whether nexus between the supply and the price paid/payable against it can be established. For instance, in a contract of job work, value of material given by the manufacturer to the job worker will not be considered for the purpose of GST. This is because the contract involved the supply of services by job worker only against which the price is paid by the manufacturer. There is no supply of material involved which can be attributable to the price paid/payable.

Few pointers to mention about 'consideration':

- Is it an *"act or abstinence or forbearance"*, that is, the reason for entering into the transaction. In section 2(31), the words *"in respect of, in response to, or for the inducement of"* is a very elaborate representation of *"act or abstinence or forbearance"* referred in section 2(d) of the Indian Contract Act,1872.
- If the said transaction would, anyway, be entered into whether with or without such 'consideration', then such *"act or abstinence or forbearance"* would not be consideration.
- Without consideration, the transaction would be a void contract. Transaction without consideration is not consider as supply except four cases listed in Schedule I.
- It must be valuable consideration. Re.1/- is not valuable consideration. Nominal consideration is not valuable consideration. Valuable, is for parties to decide but parties cannot be seen accepting nominal consideration. Valuable, is what a reasonable person will accept as valuable consideration for entering into the transaction.
- Adequacy of consideration is not relevant. Parties to decide what is adequate when such decision is taken freely and without any adverse influence.
- It must be paid or promised 'before' the transaction and not 'after' the transaction. Paying (or promising to pay) after the transaction is not consideration, it could be a reward or something else but not consideration.
- It is enforceable in a court of law only if it is a consideration and not when it is a reward because there is no mutual promise to enforce payment of reward. Paying (or promising

to pay) independent of the transaction cannot be treated as consideration. Please recollect that consideration is the reason for entering into the contract (except schedule I transactions).

- Anything valuable (in the eyes of Promisor) can be consideration even when it is not money. Non-monetary consideration is still valid a consideration.
- It should not be imaginary to be valid consideration. Real consideration must be possible to deliver and perform.
- It is not only an increase in cash or other assets to be consideration but also a reduction in liability will also be consideration.
- It must be at the desire of the Promisor (one who is to make the supply), that is, supplier must dictate the consideration. But it may flow from Promisee (one who will collect the supply) or any other person, that is, recipient or any other person may pay.
- It may flow from Promisee (one who will collect the supply) or from any other person. A stranger to a contract cannot sue on a contract (even if it is for his benefit). But a stranger to a contract can contribute consideration. But stranger contributing to consideration that was due from Promisee, must be explained as to the reasons for so doing – whether it is repayable back to such stranger (Payer) by beneficiary (Promisee) or it is non-repayable. If it is repayable, 'payment on behalf' will take the character of loan (between stranger who was the actual Payer and Promisee who collected the supply). If it is non-repayable, there may be another 'side arrangement' between them which needs to be examined if there is yet another supply *inter se*, for making such 'payment on behalf'.
- Enforceability is the truest test of whether it is consideration or not. When consideration takes a non-monetary form, reason for the transaction cannot be known (accounting rules do not permit recording transactions due to 'money measurement concept' whose consideration is in non-monetary form or even barter/exchange). Enforceability is very reliable basis to test whether there was a contract (and hence a supply) involved.

Note: One needs to bear in mind these pointers while considering examples discussed in this Chapter.

Price is consideration in money terms. Value, as stated earlier, is the price that would be prevalent under controlled conditions. This 'three-test' formula prescribed:

- Transaction having a price
- Between persons not related
- And price being the sole consideration.

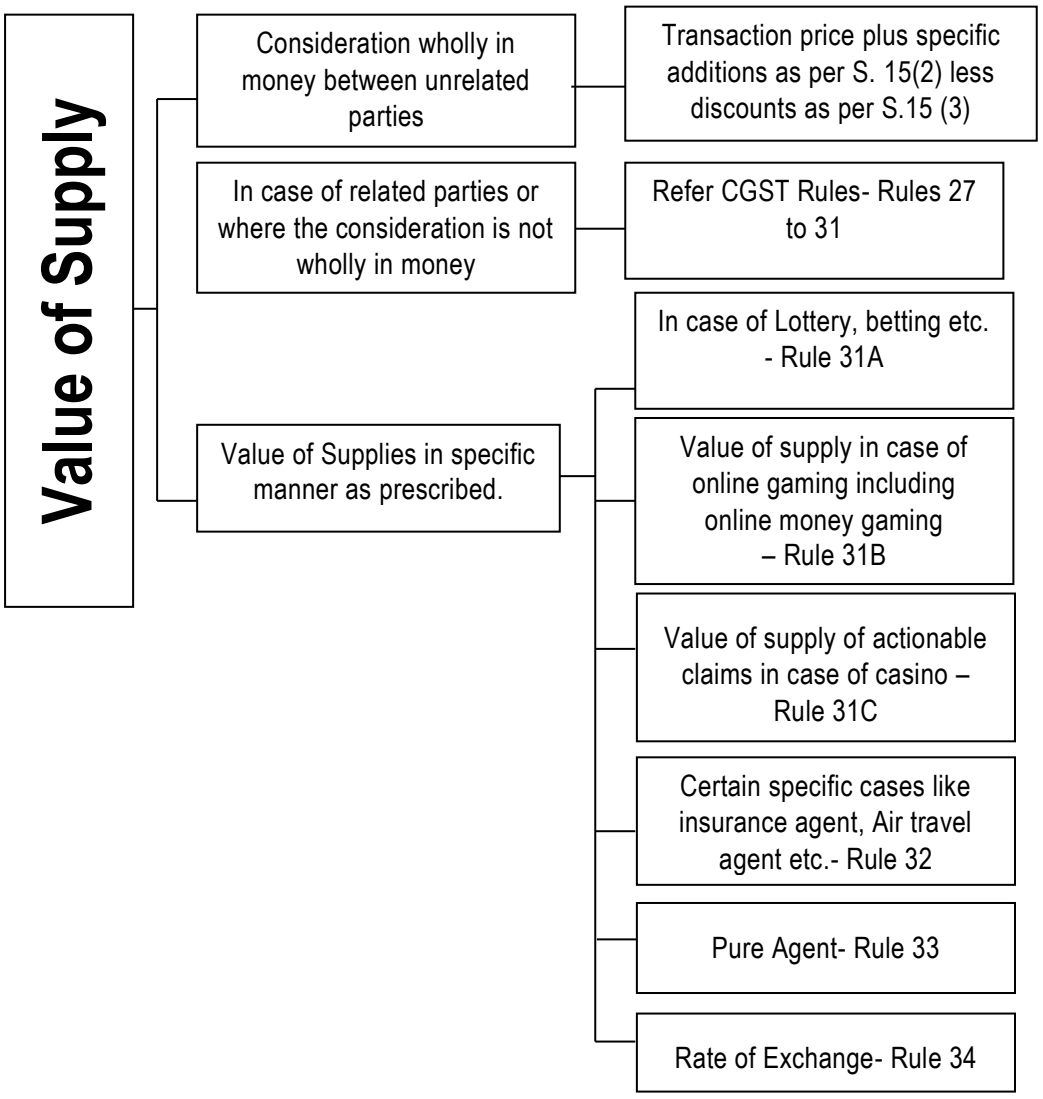
In other words, the exercise of valuation is aimed to recreate the above conditions and take any given transaction through to see the result – price – that would emerge. It is popularly

believed that transaction price and that price being the sole consideration, between 'unrelated persons' is incontestable. Thus, the two conditions where the transaction price shall not be taken as value (on which tax shall be levied):

- The parties are 'not related parties'.
- Price (that is, monetary consideration) is the sole consideration.

If either of the above two conditions are not met, the valuation shall be determined in terms of Section 15(4) read with the CGST Rules.

The above understanding is depicted graphically as under:



In addition to 'price' existing for a supply, there are two other conditions which must exist in a transaction for such price to be accepted as the transaction value. But, before we move to the Rules to determine the valuation, let's examine these two conditions hereunder:

a. Parties are not related:

Situations when the supplier and recipient will be considered as related have been enumerated in explanation to section 15(5) of the CGST Act. They are deemed to be related persons if:

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) 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;

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

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

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

(viii) they are members of the same family;

Further, it has been stated that the word 'person' will also include legal persons as per the comprehensive definition given under section 2(84) of the CGST Act. Also, it has been stated that the persons who are associated with business of one another as sole agent or sole distributor or sole concessionaire will also be deemed to be related persons.

Where persons are related, price determined under section 15(1) is disqualified and is subject to verification under section 15(4) by reference to the rules applicable.

b. Price (i.e., monetary consideration) is the sole consideration:

It is pertinent here that the term price is the sole consideration that should be understood. If there is any consideration in non-monetary form, the monetary portion of price actually paid cannot be taken as the basis of valuation because the presence of non-monetary portion in the consideration, the price is disqualified and relegated to verification under section 15(4) by reference to the rules applicable. And in this situation, price cannot be called as the sole consideration. In fact, any additional consideration received apart from the monetary consideration should also be considered to arrive at the acceptable transaction value. The fact that the consideration can be both monetary and non-monetary can very well be seen in the definition of consideration given as per section 2(31) of the CGST Act. Further, the payment against the supply made either by the recipient directly or by another person will both be covered within the ambit of consideration and considered as part of the price for the purpose of valuation. This can be elaborated by an example:

Let's say the supplier supplies goods worth ₹ 5,00,000 to the recipient. Against this supply, ₹ 3,00,000 is paid by the recipient directly and balance ₹ 2,00,000 is paid by the recipient's debtor. Both the payments will be included in the price for the purpose of valuation under GST.

It is important to understand some of the common instances when the supply is claimed to be of this nature, namely:

- Warranty supply of parts to end-customer through a dealership – the parts are supplied 'free' to the end customer. At first, it is important to determine whether the parts replaced are actually covered by warranty in the supply contract or whether there is any replacement request entertained for out-of-warranty equipment for brand building exercise. Then, the warranty obligation lies only with the original equipment manufacturer (OEM) but the actual replacement is carried out at the dealership. When a warranty claim is made with the dealership by the end customer, the dealer seeks approval from OEM. Only after 'in-warranty approval' is received from OEM does the dealer replace the part. Now, the warranty replacement between OEM to end customer is not liable to GST not because it is free but because the price for the replacement is built into the price of the equipment originally supplied and therefore tax has already been paid by OEM. However, the dealer who replaces the part does not carry any role in the warranty fulfilment. In fact, the dealer 'delivers' the part to customer but 'supplies' it to OEM. Hence, there is another supply embedded here between dealer to OEM because dealer uses a tax-paid part from his inventory to replace it for the end customer. Alternatively, the OEM issues credit note to dealer for the part used in the warranty replacement. Reference may be had to *Mohd. Ekram Khan's* decision of SC in *144 STC 542.* As such, warranty involves two supplies and neither of which are free from tax. One is tax pre-paid and another is currently taxed though not involving end customer.
- Physician's sample of drugs provided through sales representatives – These drugs are distributed by the physician during clinical consultation with patients. As such, the fee paid by patient to physician is one supply (whether taxable or exempt in GST) but the supply by pharmaceutical company to physician is another supply. To hold that cost of such free samples is included in the price of other units sold and therefore there is no requirement to again impose GST based on OMV on the samples, would go against the valuation methodology adopted in GST. In other words, GST law does not follow valuation based on 'assessable value' but follows valuation based on 'transaction value'. If the cost or the value of the goods sold were to be the basis of computation of tax payable then the argument of inclusion of cost of samples may have been tenable. But that is not the case in GST and each supply must stand on its own merit to be subjected to tax – if a price exists then tax would be computed on that price and if the price does not exist, then tax would be computed on its OMV. If it is established that there is a non-monetary consideration flowing to the supplier then, samples will be liable to GST as determined by rule 27.

- Stocks issued to discharge CSR obligations – without repeating the concept of non-monetary consideration, it is sufficient to mention that consideration is recognized in India even if it flows from a third-party to a contract. Stocks issued without any flow of consideration from a recognized and qualifying charitable institution would continue to be a supply 'for consideration' *albeit* in non-monetary form where the obligation under Companies Act stands satisfied/fulfilled. This in itself is the consideration for the supply and GST becomes payable based on the OMV. Continuing further, stocks issued in excess of the CSR obligation limit would also be a taxable supply. A legal entity is incapable of feeling the emotion necessary to make voluntary contributions towards needy causes. What in fact takes place is that the management of the legal entity will feel the necessary emotion, draw the stocks from inventory and then issue it for such voluntary/charitable purposes. As such, the withdrawal of stocks from inventory by the management itself is a supply under paragraph 4(a) of Schedule II and its subsequent issuance by the management does not alter the tax incidence. In fact, such charitable contributions by legal entity is disallowed as normal business expenditure for Income-tax purposes and enjoys deduction under a different provision of tax laws, that is, Chapter VI-A.
- Impairment of assets accounted in books – as per AS 28 (Ind AS 36) where impairment provision is to be made or reversed every time the assessment is done, the implication in GST needs to be kept in mind as to whether there is a supply and whether there is any corresponding impact of credit denial under section 17(5)(h) in respect of these assets. The usage of the words 'written off' can trigger extreme consequences and therefore caution must be exercised in the accounting treatment, disclosure of such treatment and implications of such treatment or disclosure under GST on a case-to-case basis. Generally, GST should not be applicable on 'write down' in the value of an asset that is neither permanent nor irreversible, but the nature of the accounting treatment extended to the inquiry undertaken in relation to impairment may yield a different result if it is regarded to be a 'write-off'. No definitive view is being expressed here on the GST liability of impairment.
- Leased car provided by employer disclosed in Form 12BA as perquisite – The reporting of perquisites admits a personal element involved in the enjoyment of the company car and the supply that is excluded in schedule III is the service 'by' employee 'to' employer. But the present case is of supply of leased car 'by' employer 'to' employee which is not covered by schedule III. By this admission in Form 12BA, GST becomes applicable, but the valuation will not be as adopted in rule 3 of Income Tax Rules but by GST Valuation Rules. It is important to examine the purpose of leasing a car by the employer and the purpose of permitting the employee to use the car. If it is for the advancement of the ends of the employer then it would not be a supply but if the ends of the employee are advanced, the conclusion would be very different. If the leased car provided to the employee is as per the terms of the employment agreement, then such charges of leased car become a part of cost to company in respect of that employee. In

that case, a reasonable argument may emerge that the leased car is a consideration against the supply of services by the employee to employer which is excluded from the ambit of supply as per Schedule III. However, care should be taken to examine all attendant facts, contracted obligations, established practices and other information that indicate the primary purpose of such leasing arrangements.

- Free-issue-material (FIM) provided by client to contractor – It is admittedly not a supply in itself, but the question that arises is whether there is any consideration flowing from the client to the contractor vis-à-vis the free-issue-material. Care should be taken in drafting the contract whether the work was awarded for a full rate and then deductions are made towards FIM by reducing the running-account-bill of the contractor or whether the contract itself was awarded for the reduced rate. Reference may be had to *NM Goel's* decision *[1989 AIR 285 (SC)]* in relation to sales tax and *Bhayana Builders* decision *[(2018) 51 GSTR 133 (SC)]* in the context of service tax. The development of collective thought of experts with regard to taxability of FIM depends on whether there is any consideration flowing from the contractor to the client for having issued the said material or the material so issued is the object upon which the contractor is to carry out his supplies and fulfil his contracted obligations. If the contractor were merely required to account for the entire quantity of FIM received by him with complete liberty to apply the FIM for the client's project or on any other project, without any restrictions or embargo only then would it be a case of supply of the FIM itself. For the issuance of FIM to be regarded as a 'transfer', it must be absolute and unhindered to constitute a supply in and of itself. Reference may be had to the characteristics of each of the 8 forms of supply under section 7(1)(a) and examine if issuance of FIM comes within the grasp of any of the said forms of supply. Fabric given by a customer to a tailor is not a case of supply of fabric by the customer to the tailor and a supply back by the tailor of the finished garment. An air conditioner given by a customer to an electrician called upon for its installation, is not a case of supply of the air conditioner itself to the electrician. If the air conditioner were not given by the customer there would be nothing for the electrician to install. The electrician is not at liberty to install the air conditioner in any other premises but the premises of the customer. However, in the construction of a plant wherein the contractor was liable to supply the entire materials, if steel is supplied by the recipient which results in a reduction of the price of the contract, then such giving of steel will definitely be a supply by customer to contractor within GST. Further such supply of the works contract service by the contractor should include the value of steel within it. As such, experience and understanding of the fiction in the valuation provisions under the earlier laws – where composition rate of tax was applicable or abatement valuation method was followed – must not be allowed to percolate into GST. It goes without saying that legal fiction in any law does not travel beyond the purpose for which that fiction was coined. The law of GST entertains no such fiction when it comes to valuation of each taxable supply.

- **Deposits and Advances**

> *"transaction value" is the price actually paid or payable for the supply of goods and/or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

For determination of the taxable value, classification between deposits and advances should be interpreted diligently. Advances refer to payment as part of consideration of an agreement before the supplier performs his obligation under the said agreement. It is not provided with intent of refunding unlike deposit. Advance is treated to be part of the consideration to the contract and thereby includible within the taxable value. A deposit can be described as an amount given to the supplier with an obligation entrusted upon the supplier to keep it safely. The essence of the deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made upon fulfilment of certain conditions or to apply it as consideration at a future date depending on the terms of the contract. Till the deposit is classifiable as such, it does not form part of the taxable value. As and when this deposit is applied as consideration under the contract against the supply made or agreed to be made, it forms part of the taxable value. Retention money is a classic example of deposit. To elaborate, the recipient may withhold a certain part of the consideration payable to a supplier and keeps a part of that amount as deposit with himself. Only when the given obligations are discharged by the supplier as per the terms of the contract, this retention money is released. This retention money is not included in the value if returned as such to the supplier. However, if the supplier fails to fulfil the given obligations as per the contract, the recipient may charge the said retention money and apply it against the default. When applied, the said retention money becomes chargeable to tax. It may be pertinent to point out here that the money retained will not reduce the value of the original contract of supply. This means the principal supply will continue to be valued at the full amount without any deduction for the retention money.

Another example that can be taken here is that of a rent agreement. Let us assume that a tenant is required to pay a three-month deposit to the landlord in an eleven-month contract. Upon default of the rent of any one month, the deposit is partly deducted as the rental for that month. Only to the extent of such deduction towards the rent of that month, it will be considered as part of the taxable value. Further, deposit is not chargeable to tax under normal circumstances unless applied as consideration. So, there may be a tendency towards classification of the taxable advance as deposit. However, any such classification should not be made based on the nomenclature of the payment only. Based on the nature of business, frequency, application and intent of such payments etc., it may be susceptible to challenge by the Governmental authorities. The subtlety involved in the classification of payments between 'advance' and 'deposit' should be carefully analysed in terms of the contract and as per customary practises to

determine the correct nature of the payment. Reference may be had to decision in *Metal Box India Ltd. v. CCE, Madras 1995 [(75) ELT 449 (SC)]*.

Specific additions to be made to arrive at Taxable Value

In addition to the price, certain express checks to be carried out that can disqualify a price that is otherwise perfectly admissible, are provided as under:

- Taxes levied under any other law(s)- this clause provides for exclusion of GST from the value and therefore all other taxes charged must be included in the value before quantifying GST. Taxes other than GST will cause cascading effect and this is deliberate. For instance, on import of goods IGST is charged not only on the value of goods but the basic customs duty paid under the Customs law.
- Any amounts paid by recipient that are obligation of supplier to pay - this clause removes any doubt about the need to include costs paid by the recipient to a third party in the value of supply by the supplier. The prescription in this clause is to identify any occasion where costs – in respect of which the supplier is the principal creditor / obligor – are diverted away from the principal such that the recipient directly makes the payment resulting in lowering the rightful value of supply. At the same time, this clause does not authorize every payment where the recipient is the principal creditor / obligor and require these also to be included in the value of supply.

  CBIC *vide Circular no. 47/21/2018-GST dated 08.06.2018* has clarified that if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on free of cost (FOC) basis, the amortised cost of such moulds/dies shall be added to the value of the components.

  This point may be illustrated by an example of – payment of commission to agent for facilitating the supply. If the payment is 'buying commission' which is paid by the recipient, then the obligation to pay the agent is always of the recipient and does not require to be included in the value of supply. But if the payment is 'selling commission' which happens to be paid by the recipient, then the obligation to pay the agent being that of the supplier is required to be included in the value of supply. In this case (of selling commission), the underlying obligation is that of the supplier because it is the supplier who engages the agent to identify customers to make a supply. And if, somehow, the supplier manages to pass this obligation to pay the agent (the amount towards selling commission) to the recipient, then the price paid to supplier is not the true value of supply. Had the recipient refused to pay this selling commission to the agent, then the supplier would have paid the agent and made a corresponding increase in the price of the supply. It is this objective that is being achieved by this clause.

  Another example can be of a free on road contract wherein the payment of transportation charges is directly made by the recipient and the value to be paid to the supplier by the recipient is reduced to that extent. In this case, the transportation

charges which was reduced from the price payable will be added back to the taxable value. There are several other examples that can be considered.

- Incidental expenses charged by the supplier – This clause addresses a completely different aspect compared to the previous clause. Here, costs that the supplier incurs 'at' or 'before' supply are liable to be included in the value of supply. For example, cost of packing and transportation has been debated under the VAT laws whether they are incurred before or after the 'transfer of property'. In GST, the point when title passes is irrelevant. To address the issues that had been so vigorously debated under VAT laws, this clause lays down that any cost that the supplier incurs including commission and packing which is charged to the recipient will be included in the value of supply. Incidental expenses like home delivery charges are includible in the value of supply when food is delivered by a restaurant to a customer's home. Another example can be the extra bed charges included by a hotel In the value in case of accommodation services provided by a hotel to a customer. Yet another example can be installation of new modular furniture at office wherein the installation expenses are recovered separately by the supplier. Special packing charges by a gift shop while selling a show piece can also be a pertinent illustration here. If it is a charge recovered from the recipient, then the same is includible in the value of supply provided it is not incurred 'after' the completion of supply. An example of cost incurred after date of supply yet not liable to be included in the value of supply could be amount of input tax credit, considered as eligible in pricing of supply, but denied to the supplier by (say) section 16(4). And an example of a cost incurred by the supplier after the date of supply but still includible could be cost of in-warranty parts (actual or scientifically estimated provision) supplied after the date of supply.
- Interest, late fee or penalty for delayed payment- This would also have been a charge recovered by the supplier 'after' the supply that would not be includible in the value of supply but due to the express words of this clause will be included. Please refer the detailed discussion regarding this clause under time of supply as 'special charges' under section 12(6) / 13(6) where characterization of these charges as well as their rate of tax (supply-dependent or independent) are addressed. For example, Mr. X enters into a contract for supply of goods worth ₹ 2,00,000 on 15.03.2023. As per the said contract, a payment of the said amount was required to be made within 2 months of the sale. If the complete payment is not made within this time period, a late penalty of ₹ 10,000 will be chargeable. Let us assume that the payment is not made within the said period. In this situation, ₹ 10,000 will be includible in the taxable value.

  It is not out of place here to mention the gist of clarifications regarding applicability of GST on additional/ penal interest by *CBIC vide Circular No. 102/ 21/ 2019-GST dated 28.06.2019 read with C.B.I. & C. Corrigendum F. No. CBEC/20/16/4/2018-GSTdated 15.07.2019 and Circular No. 178/10/2022-GST dated 03.08.2022*.

  - Applicability of GST on additional / penal interest on the overdue loan-Such transaction of levy of additional/penal interest does not fall within the ambit of

entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional/penal interest satisfies the definition of "interest" as contained in *Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017* and thus exempt from GST.

- Any service fee/charge or any other charges that are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in *Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017*, and accordingly will not be exempt.
- When a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.
- Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of the contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.
- Some banks similarly charge pre-payment penalty if the borrower wishes to repay the loan before the maturity of the loan period. Such amounts paid for acceptance of late payment, early termination of the lease or pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply, as discussed in detail in the later paragraphs. Naturally, such payments will not be taxable if the principal supply is exempt.
- To consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a "supply".

Inferred from above, penal charges imposed by the service provider to a service recipient for a breach of contract (e.g., for loss of parking ticket) attracts GST and it is a taxable supply.

- Supply of job work services - The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act. The value of services would be determined in terms of section 15 of the CGST Act and would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal. Whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services, has been clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker. *[Circular 88/07/2019-GST dt. 01.02.2019]*
- Subsidy realized by the supplier on the supply - this clause expressly provides for the limited exclusion of subsidy from the value of supply, that is, subsidy given by the Government alone is excluded from the value of supply. This clause makes an interesting requirement that any transaction where there is any form of price-intervention that behaves like a 'subsidy' is liable to be included in the value of supply. In today's economy, there are many transactions that 'behave like subsidy'. For example, the contribution of consideration by third party to contract, incentive to supplier given by brand holder linked to each supply, etc. Please note, extended credit terms to one customer and upfront payment terms to another customer cannot be interfered with by relying on this clause. There appears to be no room to include 'notional additions' by this clause because, unlike Central Excise which relies upon 'assessable value' for quantifying the duty, GST relies upon 'transaction value' for quantification. Also, please note that 'no cost EMI' and 'cash back' are a form of price-intervention by third party but not included in this clause because these forms of price-intervention is reaching the recipient of the supply and not the supplier. The condition for inclusion is also that the subsidy should be directly linked to the price. If the subsidy is provided in a manner which cannot be directly linked to the price of the product in question, then that amount cannot be included for the determination of taxable value. For instance, subsidy against a capital asset does not affect the value of the product directly and hence not includible in the price. However, all subsidies directly linked to price will be added if the said subsidy is not provided by the Government. For example, a cafeteria in X Ltd (a corporate office) provides lunch at ₹ 120 per plate to the employees of the company. However, the vendor in the cafeteria receives an amount of ₹ 70 per plate in the form of subsidy from X Ltd for providing the food at a lower rate. Here, the value of ₹ 70 will be added to the taxable value of ₹ 120 for the purpose of charging GST. Had this subsidy been provided by the Government to the company against mid-day meals, such amount of ₹ 70 would not have been includible in the taxable value.

Discounts to be excluded from Taxable Value

Discount is another area that needs special mention. The emphasis to tax treatment of discounts is visible in the repeated mention of discounts in section 15(3) where the value of supply will not include discount, provided:

- It is allowed before supply.
- It is allowed after supply, provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by recipient.

It would be helpful to discuss the various kinds of discounts and the GST act implication of each, namely:

- 'In-bill' discounts – are those that are allowed exactly at the point of supply to reduce the published product price as a result of negotiations. Generally, 'in-bill' discounts are admissible as the reduction in arriving at the transaction value. However, abnormal discounts cast a shadow of doubt as regards price being the 'sole consideration'. To reiterate some of the points mentioned earlier, firstly, no one gives anything in exchange for nothing, secondly, one cannot give more than what they would get, thirdly, sale under distress circumstances does not mean sale is under duress and lastly, discount must always be related to the present supply and no others. When discount on an invoice is abnormal, inquiry is necessary regarding the circumstances for such an abnormal discount. Abnormality of discount refers to discount greater than available margins. A supplier may be willing to give away all of his margin perhaps to clear away stocks and make room for new inventory. But, when the discount exceeds the margins and there are no distress circumstances, it appears highly suspicious that the supplier is receiving something in a non-monetary form from the customer. Although it seems strange that the 'in-bill' discount needs to be dissected and evaluated to such an extent but the need for that arises by the remarkable words used in the definition of consideration in section 2(31), particularly clause (b). On a quick perusal, it will now become palatable that the dissection and evaluation discussed about is very much warranted. It is so because hardly anything can escape this sweeping language '*in relation to, in response to or for the inducement of*'. The supplier may be induced to offer more than his margins to conclude a supply and choose to designate it as a 'discount'. The direction of the flow of supply is in the opposite direction of the flow of consideration, more on this a little later.
- 'Off-bill' discounts – are those that are allowed after supply through a credit note. Credit notes in the context of GST have been discussed in detail under section 34 which may be referred to identify whether in all cases of 'off-bill' discount, is credit note allowed to be issued. For such 'off-bill' discounts to qualify as a reduction from the transaction value adherence to the conditions specified in section 15(3) are sufficient. These conditions are very explicit and simple in their application. This simplicity is not to be equated with ease because these conditions specified are such that can cause great

unease and result in many transactions where 'off-bill' discounts fail to satisfy these conditions. But when the conditions are satisfied, 'off bill' discounts can be reduced from the transaction value.

- Cash discounts – are those that are allowed to incentivize the customer for prompt payment. Merely because the policy of allowing cash discount is in existence before supply does not always make cash discounts eligible under section 15(3). In other words, the price at which a transaction of supply was negotiated and concluded is what is liable to GST and not the contingency linked to payment of the dues in respect of such supply. GST is not a tax on recovery of dues toward supplies but a tax on supply itself. Cash discounts, therefore, are unlikely to satisfy the requirements of section 15(3) in most cases. As remarkable as this implication appears to be, cash discounts, when looked at very dispassionately, are more akin to bad debts than a proper reduction in the value of supply. Any resistance to accept this view needs to be supported with nothing less than the high standards laid down in section 15(3). Bad debts are not always failure to recover the value of supply. Bad debts can also be abstinence from enforcing recovery of the full value of supply. Bad debts are not the state of helplessness but the decision of prudence in the interest of continued relationship with customers, cost of pursuing recovery measures and the quantum of dues lying unrecovered. It is not suggested that all cases of cash discounts are not available to be reduced from the transaction value. But the circumstances under which cash discounts have been allowed require inquiry into the circumstances leading to this cash discount.
- Quantity discounts – are those that are aimed at reducing the price of each supply on the condition that a certain quantity of stocks need to be exhausted within a specified duration of time. Here again, inquiry is required into the terms and conditions applicable to this quantity discount. Where the stock supplied by a manufacturer to a dealer are at a specified 'dealer price', which is applied in respect of supplies to all dealers along with additional discount linked to conditions – quantity and time – that is contingent at the time of supply by the manufacturer, this would be an eligible discount under section 15(3). In this context CBIC *vide Circular No. 92/11/2019-GST dated 07.03.2019 stipulated that:*

  *"**C. Discounts including 'Buy more, save more' offers :***

  i. Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example - Get 10% discount for purchases above ₹ 5000/-, 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-. Such discounts are shown on the invoice itself.

  ii. Some suppliers also offer periodic/year-end discounts to their stockists. For example - Get an additional discount of 1% if you purchase 10000 pieces in a year, get an additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or

before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

iii. *It is clarified that discounts offered by the suppliers to customers (including staggered discount under 'Buy more, Save more' scheme and post-supply/ volume discounts established before or at the time of supply) shall be occluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.*

iv. *It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts."*

Further, if such discounts which are not known at the time of supply or are offered after the supply is already over and are allowed in an invoice in respect of supplies made earlier are not discounts because transaction value can be reduced by discount allowed in respect of the present supply and not in respect of any other supplies. This is because one of the conditions for allowance of the reduction in value is that the discount should be specifically linked to the original invoices against which the discount is to be given. In this regard the *Circular No. 92/11/2019-GST dated 07.03.2019* clarified that*:*

*"**D. Secondary Discounts***

i. *These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s. A supplies 10000 packets of biscuits to M/s. B at ₹ 10/- per packet. Afterwards M/s. A re-values it at ₹ 9/- per packet. Subsequently, M /s. A issues credit note to M/s. B for ₹ 1/- per packet.*

ii. *……...*

iii. *…..... It is hereby clarified that financial/commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.*

iv. *It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.*

v. *In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2(D)(iii) or by any other means,*

except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.

……..”

- Special discounts in addition to discount as per the agreement between manufacturer and dealer– are those that are allowed by a supplier to incentivize aggressive marketing of inward supplies on special occasions or in special market conditions. In most cases, such incentives designated as special discounts are really acknowledgment of services of aggressive marketing and product promotion. The direction of flow of consideration is an indicator of the direction of receipt of supplies. In other words, the incentives flow from the manufacturer to the dealer, that are not related to the present supplies. In fact, it indicates an acknowledgment by the manufacturers of the services received from the dealer. The services so identified are from the dealer back to the manufacturers and this is a supply on its own. In fact, the rate of tax of the services supplied by the dealer to the manufacturer needs to be classified independently of the classification applicable to the supplies by the manufacturer to the dealer. Although it is true that between a manufacturer and a dealer all transactions are closely related by the common thread of the dealership agreement, GST travels deeper into this relationship and picks out individual transactions of supply to apply the right rate of tax on each of them.

- No Claim Bonus (NCB) - As per practice prevailing in the insurance sector, the insurance companies deduct NCB from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

  It is, therefore, clarified by *Circular No. 186/18/2022 dated 27.12.2022* that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.

  It has been further clarified in the above Circular that NCB is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice.

- Free stocks – are those that are similar to discounts ‘in-kind’ except that the articles given away are the items of inventory dealt with by the parties. In such a case, the

stocks given away are taxable outward supply in exchange of non-monetary consideration flowing from the manufacturers to the dealer entitled to such free stocks. When the manufacturers give away stocks for free to a dealer, it is clear that this is not the case of charity by the manufacturer towards the dealer but a prudent business decision by the manufacturer to allow the dealer to realize the following proceeds from the sale of such free stocks and retain them as his incentive without having to make any payment to the manufacturer towards the cost of such free stocks. It is important to note that the cost of such free stocks in the hands of the manufacturer would be far lower than the value of the incentive realized and retained by the dealer which is the selling price of these stocks. Here is a case where a manufacturer incurs a small cost and delivers a far greater perceived value to the dealer. In Hindi, the word consideration has been referred as 'Prathiphal' which seems to convey the meaning on 'quid pro quo' more clearly. Also note the word 'Uthprerna' for inducement for making the supply. A further implication of giving away free stocks is that, in the hands of the manufacturer it is a taxable outward supply without the benefit of input tax credit to the dealer as no payment is made in respect of the supply. Having paid tax once on the outward supply by the manufacturer, there is a further taxable outward supply in the hands of the dealer when the free stocks are sold to customers. Thus, transactions of issue of free stocks may be revisited .

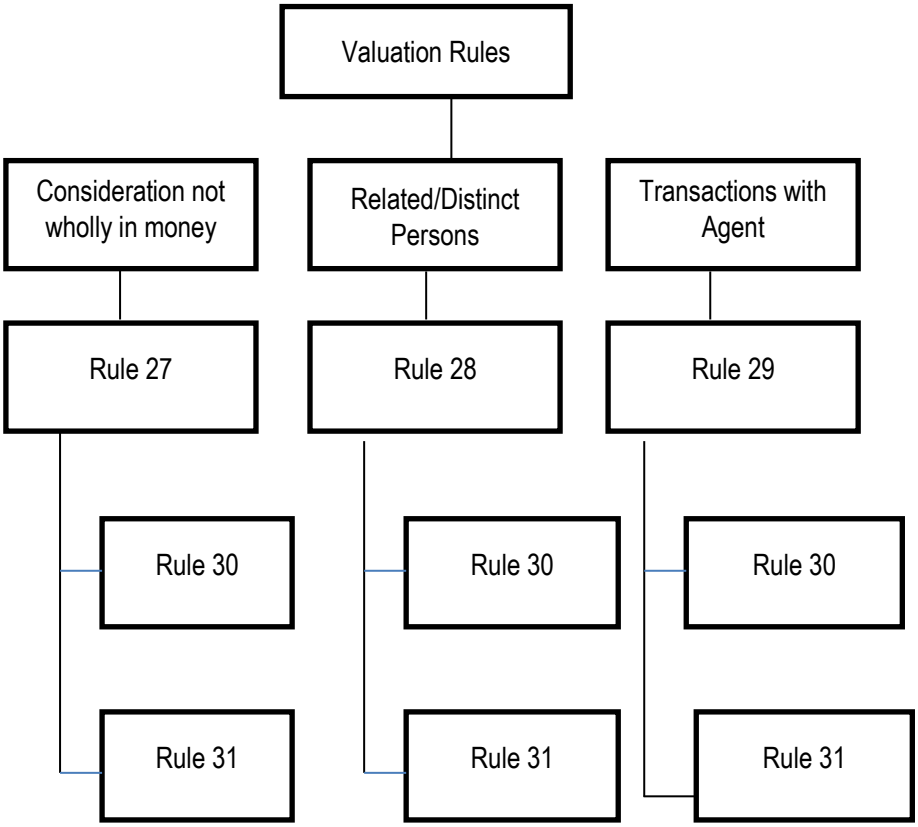
- 'Buy one-take two' – are transactions where two units of stocks are supplied against payment of the price designated against only one of them. Under the method of transaction value-based assessment of tax under the GST law, each unit of stock is liable to determination of transaction value on its own merit. 'buy one-take two' is not the case where the two units of stocks are bundled together with a single price assigned to them but are individually priced with no differentiation in the quality of each of the units except that the present offer allows the customer to pay the published price of one and collect two units of the stock. The stock collected without making any payment could very well have been the one that was paid for and purchased or *vice versa*. It merits to mention here that multiple units of a product may be bundled together with a single price published for them such as 4-bars of soap or pack-of-5 socks. Therefore, unless bundled together with preselected units of stock and a single price affixed, all other transactions of 'buy one-take two' are individually taxable – the paid unit at the price paid and the free unit at the price determined by the valuation rules.

Determination of Value as per CGST Rules

If and only if the transaction value cannot be determined as above, reference to CGST Rules related to valuation is permitted. These are cases where either the parties are related or the price is not the sole consideration. Government is free to notify tariff values in specific cases to determine the tax payable in such cases. This would prevail over the valuation provided for in sub-section 1. Valuation Rules are prescribed under Chapter IV of the CGST Rules from Rule 27 to Rule 35.

The value shall be determined in the sequence of rules given. It is only when the earlier rule is not applicable; the subsequent rule may be resorted to. It is not open to the taxpayer to choose the valuation rule of his choice.

The Rules for determining the Valuation shall be followed in the following sequence:



The above Rules are explained below in points:

(a) Consideration not wholly in money - Rule 27

This rule comes into effect when the condition that price is the sole consideration gets violated. It is important to consider the difference between 'free' and 'no consideration'. It is probably common to consider that these two are synonymous. At the outset, there can be no contract without consideration. Experts in Contract Law will see the gross illegality if one were to say that there is a contract that has no consideration in it. If the contract is valid, then there must exist a consideration though in non-monetary terms which is erroneously stated to be a contract having 'no consideration'. It is impermissible that a contract exists but lacks consideration. It is just impossible. If price is not the sole consideration, there should be consideration in some other form as per the contract. Normally, upon analysing the terms of the contract, consideration in all forms can be found. Now, if there is a contract with non-monetary consideration, rule 27 of the CGST Rules comes into operation. Although this

rule states that it applies when 'consideration is not wholly in money', it applies even when the consideration is partly in money or wholly in non-monetary form. This rule provides that the value of supply "shall be" and not be "based on" or "guided by", so that mandatory nature of the prescription of this rule can be appreciated. Further, this rule comes into operation not only when the consideration paid is partly in money and partly in non-monetary form but also when the whole of the consideration is found to be in non-monetary form. Some of the transactions discussed earlier and found to be taxable supplies such as discounts, will rely on this rule to arrive at their value.

The following transactions of supply under section 7 straightaway arrive at this rule for the determination of the transaction value as they failed to qualify for application of section 15(1), namely:

- barter and exchange transactions
- transactions listed in Schedule I
- transactions listed in Schedule II but without consideration

The order of application of the methods prescribed under this rule cannot be deviated from merely because a later in the third is a more acceptable answer or is easier to apply. The value of supply shall therefore be determined in the **following sequence**:

(i) Open market value (OMV)– which is the full value in money payable by an unrelated person as its sole consideration at the same time as the supply under inquiry. OMV is a new phrase but not too far from its scope and covered from its explanation. Transaction value is price of the supply under inquiry and OMV is the price of the same supply but without the circumstances that impairs the use of transaction value for quantification of tax. OMV is not comparable price to unrelated customer. The definition of OMV does not allow comparison of supplies in comparable circumstances. It only requires supply 'at the same time'. So, OMV is not price in another 'comparable' supply at a close proximity in time. Bought-out goods given for non-monetary consideration has the purchase price itself as the OMV for outward supply. This provision does not provide the manner of adjustments to be made to overcome the effect of those disqualifying circumstances present but simply states that OMV 'shall be' the value of the supply.

(ii) Sum total of monetary consideration and 'money-equivalent' to consideration not in money – here two aspects are involved – one, to establish that OMV is not available (a task that will be discussed shortly) and two, to arrive at the money value of the non-monetary consideration. Having identified that OMV is not very specific to be able to clearly be determined, it becomes more acute to establish that OMV is not available before proceeding to clause (ii). Onus lies on the one who asserts – the taxable person would have admitted that the circumstances of section 15(1) are not fulfilled and warrants recourse to the rules but having arrived at the rules, the onus remains with the taxable person to establish that OMV is not available. OMV is not comparable alternate price. Supplies to unrelated persons are always taking place although in different

'commercial circumstances' which is not provided in the definition of OMV. As such, overcoming the first aspect – OMV not available – is a challenge which tax administration can be stubborn about. Then, arriving at money value of non-monetary consideration is not guided by the requirement to use standards of Cost Accounting, etc. Rule of reasonableness is the only guide for arriving at the value which can be shot down by tactic of arbitrariness of the tax administration. Suitable guidance is much needed in this entire exercise.

For instance, an old antique art of work is sold against which consideration is partly in the form of money of ₹ 20,000 and partly in the form of a new furniture whose value known at the time of supply is ₹ 35,000. Then the value for the purpose of GST will be the monetary consideration combined with the equivalent money value of the new furniture i.e., ₹ 55,000.

(iii) Value of supply of 'like kind and quality' – The phrase "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both [Explanation to clause (b) of Rule 35 of CGST Rules]. This is a salutary method where there is much experience in Customs Valuation in successfully arriving at the comparable value. Subjectivity must be overcome which is possible by applying data that is reliably substantiated rather than arbitrary factors. The definition provides guidance on the manner of finding this 'likeness' for identifying whether the comparable are really comparable without being subject to any arbitrariness in tax compliance or tax administration.

As per the explanation of the term 'supply of goods or services or both of like kind and quality', the supply through which the comparison is taking place should be under similar circumstances in respect of the characteristics, quality, quantity, functional components, materials and reputation of goods or services or both and should be same or closely/substantially resemble the subject supply. So, all the factors should be taken into account and the supply which is closest in terms of these factors should only be taken for the purpose of valuation. The factor may not be exactly replicated in the supply being valued but should be substantially resembling the supply being used for comparison. This rule should not be applied if the circumstances are vastly different between the supply being valued and the one being used for comparison. For instance, the value of a product in New Delhi and that in Sikkim may be vastly different due to non-similar circumstances. Further, it may be very difficult to compare the reputation and quality in respect of services as it involves subjectivity and arbitrariness. The nature of the services will depend on the facts and circumstances of each case.

Taking an example where this mechanism can be applied, a customised air conditioning unit whose OMV is not available is installed at an office wherein the consideration is paid in the form of money of ₹ 40,000 and an old air conditioning unit whose price is not

available at the time of supply. A similar air conditioning unit in terms of characteristics, quality, quantity, functional components, materials and reputation etc. has been installed by the company at another client's premises for ₹ 60,000. Since, the value of goods of like kind and quality is available, the value of ₹ 60,000 will be taken under rule 27.

(iv) Sum total of monetary consideration and value determined by rule 30 or rule 31 in respect of consideration not in money – similar to the previous clause, the first of the two aspects – value is not determinable as above – is the one that presents the greatest difficulty. Expect that it is crude to import values from rule 30 or 31, the rest of this clause is simple in its application. Please note that rule 30 must be applied first and then rule 31, more on that in the discussion of those rules. Some illustrations are provided in rule 27 that may be referred for understanding its application.

These illustrations do not cover all possible scenarios but lay down some pointers that need to be considered while determining the valuation and GST impact of various transactions.

(b) Supply between related persons (Rule 28)

A supply between related persons or between distinct persons (with same PAN) is *prima facie* not fulfilling the requirements of section 15 to admit the transaction value for quantification of GST. In such cases, the value of supply will be:

(i) OMV – please refer to the previous discussion

For example, a trader in computers gifts one of the laptops worth ₹ 50,000 to his relative during Diwali. Since the OMV of this is available, it needs to be taken for the purpose of charging GST.

(ii) Value of supply of 'like kind and quality' – please refer to the previous discussion

For example, a Holding company provides a capital equipment whose OMV is not available to its subsidiary company which is not registered under GST. A similar capital equipment in terms of characteristics, quality, reputation etc. is available in the market at ₹ 10,00,000. This value of ₹ 10,00,000 will be adopted for the purpose of valuation.

(iii) Value determined by rule 30 or rule 31 – please refer to subsequent discussion.

The proviso to this rule is of significance where it is the recipient, who is entitled to full credit, the value declared in the invoice is deemed to be OMV. In other words, in a case of supply eligible by this rule - related parties or distinct persons – the supplier is entitled to unquestioned admittance of 'any price' that may be charged. This provision appears to accommodate internal preferences of the parties where the tax paid is revenue neutral. However, caution is advised in taking recourse of this proviso and charging a price lower than cost.

Further, for the purpose of calculation of value of supply of services by a supplier to a recipient who is a related person, providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, *Notification No. 52/2023 CT dt. 26.10.2023*

has introduced a *non-obstante* sub-rule (2) in rule 28, according to which, the value of supply of such services shall be deemed to be

- one per cent of the amount of such guarantee offered, or
- the actual consideration,

whichever is higher.

Guarantee between related persons:

Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.

Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence, the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per the provisions of Schedule I of CGST Act.

Effective from 26.10.2023, a new methodology has been carved out for valuation of corporate guarantee given by any related persons on behalf of another. This would be applicable only if such guarantee is provided to any bank or financial institution. The value of such corporate guarantee would be higher of the following:

a) 1% of the amount of guarantee offered or

b) the actual consideration

The aforesaid valuation would be applicable whether or not the recipient is eligible for full ITC.

The above has also been clarified by *Circular no. 204/16/2023-GST dated 27.10.2023.*

The certainty in valuation in future should put to rest all disputes which are arising in GST. While the aforesaid valuation has been made applicable from 26.10.2023, one may infer that the value declared in the invoice would be deemed to be the open market value for the period before such date assuming full ITC is available to the recipient. Even if no value had been charged for the period before 26.10.2023, no GST should be applicable in such cases through the inference of *Circular no. 199/11/2023-GST dated 17.07.2023*.

Further to the above, valuation for personal guarantee given by the director on behalf of the company has also been clarified through *Circular No. 204/16/2023-GST dated 27.10.2023*. As per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI's *Circular No. RBI/2021-22/121 dated 09.11.2021*, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per

RBI mandate, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.

There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.

Inter Branch Supplies

In the case of inter-branch supply of services, valuation of these supplies will involve additional tax due to costs such as salary, amortization, etc. which do not involve any input tax credit. For example, if a Head Office (HO) incurs certain entity-level expenses that are common to all registered taxable persons in other States, it is not permissible for the HO to retain the whole of these common credits due to the limitation in the language of section 16(1) – used by him in his business – although a portion of this credit may still be available. Previously, such HOs were registered as ISD under service tax but this may not be the case in GST.

Please refer to discussion in section 20 for some analysis of these issues. Now, surely the HO is not 'merely an office receiving invoice for services' but is actually the 'seat of management and control' performing very significant services that are supplied to all branches. HOs ought not to continue as ISD but recognize the nature of the supply of services to all branches. And on this basis, apply these rules for quantifying tax to be discharged. ISD is not to be substituted for inter-branch supply. Any location that is a 'fixed establishment' as per section 2(50) cannot be an ISD-location as per section 2(61). And if it is a fixed establishment, it would be an indicator of potential inter-branch supplies.

The proviso in this rule does not authorize payment of tax on cost because the value to be determined under this rule is OMV or else like-kind-and-quality or else rule 30 / 31 value. Hence, HO may be required to invoice for its services appropriately and not distribute credit as ISD. Valuation at nominal amount appears to be permissible by second proviso to this rule. The eagerness to value stock transfers at nominal value misleads one to rely on the condition – recipient eligible for full input tax credit – appears to play culprit. It must be recalled that a transaction of stock transfers from one branch to another being defined to be a taxable supply under section 7(1)(c) read with schedule I deserves to be subjected to the rightful amount of tax based on the rightful value of this supply. This rule cannot undo what was set out to be achieved by the section. In order to read this second proviso harmoniously with the definition

of supply, it appears to be appropriate to construe 'the value declared in the invoice' under the second proviso to be nothing short of the OMV of the stocks transferred between the branches inter se. This OMV could very well be the cost incurred by the supplier branch. But if the urge to apply nominal value to such supplies continues, by the words 'value declared in the invoice', the one declaring the value on the invoice cannot do so by affixing a nominal value which would be completely in disharmony between the rule and the section. A quick reference to rule 32 makes it clear that section 15 provides the boundaries within which every exercise of valuation must operate.

For example, an entity has four branches in Delhi, Mumbai, Kolkata and Bengaluru. There is a head office of that entity in Hyderabad. The HO in Hyderabad recruits certain key management personnel for its branches. Here, it will be considered as if the manpower recruitment services are provided by the HO to its branches. For the valuation purpose, one needs to go through the hierarchy provided in rule 28. As mentioned above, a nominal value for the purpose of billing should not be taken. There should be a reasonably justifiable method of valuation as explained above.

Taxability of such Inter Branch (Distinct person) transaction has been upheld in the *Order No. KAR/AAAR/05/2018-19*, *dated 12.12.2018* in case of In Re:*Columbia Asia Hospitals Pvt. Ltd*. In this ruling, distinction between ISD and Cross charge has been brought out and consequently services rendered by one part of the legal entity to other parts of the entity, which are considered as distinct persons in the GST framework stands taxable and the valuation shall be as per the valuation rules. The relevant rule for such valuation shall be rule 28. It was held in the case that support functions provided by employees of HO to branches is taxable. It was further held that cost of employees working at HO would be an integral part of the cost of services rendered by HO to its other distinct units. A different decision has been taken in the case of *CC, CE & ST, Bangalore (Adj) etc vs. Northern Operating Systems Pvt. Ltd. in Civil Appeal No. 2289-2293 of 2021* by the Hon'ble Supreme Court *dated 19.05.2022* that the secondment of employees by the overseas group company to NOS was a taxable service of 'manpower supply' and Service Tax was applicable on the same. It is to be noted that secondment as a practice is not restricted to Service Tax and the issue of taxability on secondment shall arise in GST also. However, there may be multiple types of arrangements in relation to secondment of employees of overseas group company in the Indian entity. In each arrangement, the tax implications may be different, depending upon the specific nature of the contract and other terms and conditions attached to it.

While taxability of such transaction has been upheld in *M/s. Specsmakers Opticians Private Limited TN/AAAR/09/2019(AR) dated 13.11.2019* but the due weightage for second proviso to rule 28 has been given affirming that wherever full Input Tax Credit is available to the recipient, the value mentioned in the invoice shall be the open market value.

For clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons, following gist of *Circular No.199/11/2023-GST dated 17.11.2023* may be referred:

Issue - 1

Whether the cost of all components including salary cost of Head Office (HO) employees involved in providing the said services has to be included in the computation of value of services provided by HO to Branch Offices (BOs), when full input tax credit is available to the BOs?

Clarification

In respect of internally generated services provided by the HO to BOs, the value declared in the invoice by HO shall be deemed to be the open market value of such services, in terms of second proviso to rule 28 of the CGST Rules, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

Issue - 2

Value of supply of internally generated services provided by HO to BOs in cases where HO is not issuing tax invoice, but full input tax credit is available to the concerned BO.

Clarification

In such cases, the value of services may be deemed to be declared as Nil by HO to BO and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

Issue - 3

Value of internally generated services where HO is issuing tax invoice to the BOs and full input tax credit is not available to the concerned BO.

Clarification

In respect of internally generated services provided by the HO to BO but full ITC is not available to the BO, the cost of salary of employees of the HO, involved in providing services to BOs is not mandatorily required to be included while computing the taxable value of supply of services.

(c) Supply through agent (Rule 29)

Every supply involving an agent is not a taxable supply. As discussed in Chapter III, supply by Principal and Agent *inter se,* all though merely a channel to supply to the end customer, is treated as a supply in schedule I where the goods are handled by the agent or principal. Please note that this rule is applicable only in case of 'supply of goods' and not 'supply of services' or 'supply involving goods treated as supply of services'. When this rule is applicable, the value of supply will be:

(i) OMV or 'at the option' of supplier 90% of the price charged for goods of 'like kind and quality' by the Agent– this rule provides for an ad hoc reduction of 10% from the price otherwise charged to accommodate the incentive or margin left for the Agent in pricing.

Where margins are lower than 10%, this rule can cause great anguish. But discarding the use of this clause is not permitted freely.

(ii) Value determined by rule 30 or rule 31 – please refer to subsequent discussion.

Transactions treated as supply by Schedule I of the CGST Act, which need to be subjected to tax require a valuation mechanism. Principal and Agent do not *ipso facto* become related persons for rule 28 to be applicable to them.

Please note that agency cannot be inferred but must be expressed or implied. Agency may be understood as 'delegated authority' and 'detached consequences'. Within the scope of agency, the principal will be obligated to third parties without any limit, by the actions of the Agent. As such, the authority to the Agent to act is delegated by the Principal and the Agent is not obliged to the consequences arising from his actions, provided they are within the scope of the agency. Undisclosed Principal still obligates the principal because the lack of disclosure is to the third party and not that the principal is unaware of the possible obligations accruing.

It is important to note that not all transactions between a principal and agent attract para 3, Schedule I but it is only those transactions where the Agent 'handles' the goods of the principal. Only when it is identified that it is a transaction of such nature, will the valuation under this rule become applicable. Further, it is to be considered that recourse to this rule is not an option because every transaction between principal and agent are disqualified under section 15(1) and required to be examined with reference to these rules. Once having arrived at rule 29, there is only one method – price of the supply of goods of like kind and quality – and no others. This rule applies only in respect of goods and not services.

There is a very interesting clue in a press release that permits an advertisement agency to opt for either agency-model or resale-model as regards publishing of advertisements in media. Here, the press release appears to require an alternation in the contractual arrangement with the media (which may not be agreeable or not advisable), but it would be advantageous if, for limited purposes of GST, the agency was to apply agency-model or the resale-model.

(d) Cost based value (Rule 30)

Where cost is used as a base for determining the value of supply and when any of the more specific methods prescribed are unavailable for specific reasons, this rule may be applied. It provides that the value will be 'cost plus 10%'. Please note that this rule applies to both goods and services supplied.

Every supply claimed to be free but involving non-monetary consideration faces the threat of tax being determined on this method. The cost of acquiring the product is the cost incurred by the person for bringing the production in the condition and location for the purpose of selling. While price paid to purchase goods that are given away for non-monetary consideration, the OMV is this purchase price but when it not a readily bought-out supply (goods or services), the cost construction method may need to be applied. Cost Accounting Standards may be relied upon to determine cost for purposes of this rule. CAS-4 enumerates various costs to be

included in determining the cost of raw materials. As per the said standard, the cost of material shall consist of cost of material, duties, taxes, freight inward, insurance and other expenses directly attributable to the procurement. Trade discount, rebate and similar items will be deducted in determining the cost of material. Input tax credit in any form will also be deducted. Thus, cost of acquisition will include the cost of transportation, any local taxes, insurance, other expenditures like commission etc. on procurement of goods. However, cost of determining the provision of service is not that straightforward. In case of services, the major components are the cost of the employee and other administrative expenses,

Please refer to the few illustrations discussed in previous sections such as physician's samples, etc. Tax administration may not dispute, if valuation is not lower than 'cost plus 10%'. Although this method appears simple, it is important to note that only when it is established that the other more specific rule and the specific methods under those rules are unable to yield an acceptable value for the supply under inquiry. Only where the other methods of valuation cannot be applied, will this rule be available to apply. Where margins are not as high as 10%, suppliers may justifiable move to rule 31 but by satisfying that this rule does not provide a reasonable value.

In respect of supply of services (also transactions involving goods treated as supply of services), the supplier is permitted to apply rule 31 instead of rule 30, if that were more favourable.

(e) Residual valuation (Rule 31)

Where value cannot be determined by any other method, this rule authorizes the use of 'reasonable means to arrive at the value. It is important to consider that these reasonable means must be commensurate with the principles of section 15. This rule provides some crucial guidance on the manner of application of all other rules – any valuation method applied that is contrary to 'principle of section 15' – may not be accepted.

(f) Lottery, betting, gambling and horse racing (Rule 31A)

The debate on the taxable value of supply for betting, lottery, gambling and horse racing has been put to rest by introduction of rule 31A to the CGST Rules vide *Notification No. 03/2018-Central Tax dated 23.01.2018*. The said rule overrides all the other provisions relating to Valuation Rules. The use of the word 'shall be' implies that the value has to be necessarily determined as per the said rule. According to this rule, the valuation in respect of the following services shall be determined as follows:-

Value of Lottery: Value shall be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher. The expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010 which is defined to mean any State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State.

As per rule 31A, the face value of the lottery ticket shall be taken as inclusive of applicable taxes which is *pari-materia* with the provisions specified under rule 35.

Betting, Gambling or Horse Racing – Actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid to totalisator. This implies that the value on which GST has to be paid will be the amount of bet placed or the amount paid to the totalisator instead of the commission or share of revenue of the race club.

It is interesting here to refer to Schedule III which states that actionable claim other than lottery, betting and gambling would qualify as an activity or transaction which shall be treated neither as supply of goods nor supply of services. This means that transaction in lottery, betting and gambling would for the purpose of GST law, qualify as supply. The terms 'goods' under section 2(52) includes actionable claims. Services under section 2(102) is defined to exclude goods. Further the "specified actionable claim" as defined under section 2(102A) means the actionable claim involved in or by way of – betting, casinos, gambling, horse racing, lottery or online money gaming [Inserted vide *CGST (Amendment) Act, 2023 dated 18.08.2023]*. Accordingly, the actionable claim in the form of chance to win betting, gambling and horse racing with reference to the above definitions will be goods and not services. Business under section 2(17) is defined to include activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club. The tax rate notifications issued for goods *[i.e., Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 as amended]* states that 'actionable claim in the form of chance to win in betting, gambling, or horse racing in race club' is liable to tax at the rate of 28%. The rate notification issued for services *[i.e., Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017]* also specifies that the gambling as an activity involving services and accordingly, liable to tax at 28% [refer entry No. 34(v) of *Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017].*

It is also interesting to refer to the clarification issued by *TRU vide F. No. 354/107/2017-TRU dated 04.01.2018* wherein it is clarified that the actionable claim involving betting, gambling or horse racing would be a service. It is further clarified that the tax would be applicable at 28% on the total value of betting which exceeds the authority to tax since, only certain percentage of the total value of betting will be retained as commission in providing the services of betting/gambling and balance amount forms part of the prize money.

With the above ambiguities there may be some confusion about whether to tax actionable claims as goods or services and the rate at which such supply should be taxed.

It is imperative to mention that valuation in respect of lottery was questioned along with legality of GST being levied on the same *vide* Writ Petition (Civil) No. 961 of 2018 in case of *M/s Skill Lotto Solutions Pvt. Ltd. vs. Union of India [2020 (12) (Supreme Court)]* at Hon'ble Supreme Court of India. The abatement sought in lottery valuation was turned down in this order upholding the validity of valuation provisions of GST under section 15 read with rule 31A.

(g) Value of supply in case of online gaming including online money gaming (Rule 31B)

Online gaming has been defined under section 2(80A) of the CGST Act, 2017 to mean offering of game on the internet or an electronic network and includes online gaming. Therefore, the condition for falling within this ambit is that of any game being played over internet or electronic network. The scope of such online gaming includes that of online money gaming too.

Online money gaming has been defined under section 2(80B) of the CGST Act, 2017 as:

"online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force".

Further, as per section 2(117A), virtual digital asset shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.

Rule 31B notified through *Notification No. 51/2023-Central Tax dated 29.09.2023* delineates the methodology for ascertaining the total value of supplies within the domain of online gaming, encompassing any enforceable claims linked to online money gaming. This total value encompasses the entirety of whole amount paid, payable, or deposited with the supplier by a participant, irrespective of the form, which may encompass virtual digital assets. Significantly, the proviso to rule 31B specifies that any funds reimbursed or returned by the supplier to the player, even in cases where the player hasn't utilized the funds which they've paid or deposited with the supplier for event participation, cannot be deducted from the overall supply value for online money gaming.

With effect from 01.10.2023, 'specified actionable claims' have been specifically defined in terms of the GST law. All actionable claims except the specified actionable claims have been kept outside the ambit of GST. The specified actionable claim includes that of online money gaming.

Therefore, online money gaming is now specifically covered within the ambit of GST irrespective of whether the game involves skill, chance or both. Further, there is an involvement of deposition of money or money's worth which is put at stake against an expectation of winnings of a higher amount.

The games may involve deposition of money and withdrawal of a higher or lower amount or no withdrawal at all by the person participating in the game depending on whether he wins or loses the games. Even though the amount earned by the online gaming company may be restricted to the differential portion between the amount deposited and the amount returned back to the player, the liability of GST would arise on the value of initial deposit of money by the player for playing the game. The amount returned or refunded would not be considered for

deduction from the total value of supply. The legality of such valuation may be tested by the judiciary system in the future. Moreover, a scenario that has not been addressed yet is when the user's deposited amount may be utilized for accessing other services on the online gaming platform, which may be subject to a different tax rate.

(h) Value of supply of actionable claims in case of casino (Rule 31C)

Rule 31C notified through *Notification No. 51/2023-Central Tax dated 29.09.2023* deals with the assessment of the supply's worth when it comes to actionable claims related to casino gaming. Similar to rule 31B, it specifies that the total value encompasses all funds paid or payable by a player, whether it's for tokens, chips, coins, or tickets used within the casino or for engagement in various games, events, competitions, or any other pursuits where these items aren't obligatory.

With effect from 01.10.2023, specified actionable claims have been specifically defined in terms of the GST law. All actionable claims except the specified actionable claims have been kept outside the ambit of GST. The specified actionable claim includes that of casinos.

Casinos usually requires the player to purchase tokens, chips, coins or tickets or any other items with value to use in the casino. In all cases, the amount paid originally for purchase such tokens or any items for value in use would be considered as the value of supply.

In certain cases, the amount may directly be payable or paid for participating in any event including game or competition. There may not be any requirement of purchase of any tickets or tokens in such games. In such cases, the valuation would be the amount paid or payable for participation in such event.

The amount which is refunded back to the player on account his winnings or token not used at all would not be allowed as deduction from the value. Therefore, the casino would end up paying taxes on the gross value which may be much higher than net amount retained by the casino from the activity of organizing such games or events.

The fundamental concept underlying both rules is that the funds received by a player following a victory in an event, game, or any other activity, which are subsequently utilized by the player to engage in another event without withdrawal, should not be regarded as a portion of the sum paid to or held by the provider on the player's behalf.

Note: The finance minister Nirmala Sitharaman has clarified that the valuation rules for levying 28 percent GST on entry level bets on online gaming platforms are effective prospectively.

(I) Specific supplies (Rule 32)

Before commencement of the discussion on the provisions of rule 32, it may be pertinent to emphasize here that the determination of valuation as per the mechanism specified is only an option available to the supplier. If the supplier feels that the valuation mechanism specified under the rule 32 does not reflect the correct position or that the value adopted should be in accordance with section 15 and rules 27 to 31, he may choose to ignore the said rule 32. He

may determine the value accordingly under section 15 and rules 27 to 31 as the case may be. Supplies which were previously under some form of abatement of value are found in this rule, namely:

(i) Supply of services involving sale / purchase of foreign currency, the value of supply will be:

(a) option (a) – difference between buying-selling rate and the reference rate published by RBI. Where reference rate is not available, 1% of gross Indian Rupee value of the transaction. And where the conversion is not into Indian Rupees, then 1% of the lesser of the Indian Rupee equivalent of each currency exchanged;

(b) option (b) – 1% of gross amount upto ₹1 lac, 1/2% after ₹1 lac upto ₹10 lacs and 1/10% after ₹10 lacs. This option (b) once exercised cannot be withdrawn during the financial year.

(ii) Supply of services in relation to booking of tickets for air-travel by a travel agent - The value of such supply will be 5% of basic domestic fare or 10% of basic international fare of the air ticket. As per the rule, 'basic fare' means 'that part of airfare on which commission is normally paid by airline'; hence, air travel agents availing the valuation under this rule, has to pay tax only on that part of airfare on which commission is paid to them (i.e., basic fare X 5% / 10%). In this context, one needs to take a note that only those agents who receive commission from the airline can opt for this method. In other words, this provision is applicable only in cases where airlines sell the tickets through their agents. Accordingly, the agent will be raising tax invoice as below:

Purpose	Address to	Value	Rate of Tax
Commission	Airline	5% of basic domestic fare	18%
		10% of basic international fare	

The passenger or the person booking the ticket, if registered, can claim the credit of GST charged by the airlines on the air passenger transportation service if the ticket is issued by the airlines in its name. The credit of GST paid by the air travel agent on the commission received by it from the airlines, the value of which is computed as per rule 32(3), can be claimed by the airlines basis the invoice issued by the air travel agent to the airlines.

(iii) Supply of services in relation to life insurance, the value of supply will be gross premium reduced by investment allocation, in the case of single premium policy will be 10% of premium and in all other cases will be 25% of first year's premium and 12.5% for other year's premium. This rule will not apply to premium related to coverage for risk-of-life.

(iv) Supply of services of person dealing in second-hand goods, the value of supply will be difference between purchase price and selling price. Please note 'second-hand goods'

refers to goods used or otherwise employed in some process without causing any change in their nature. Used goods are not the same as pre-owned goods which need not have been put to use. For example, a motor car where the mark of registration has been assigned by RTO, even if left unused for long time will not be able to satisfy that it has not been used. Similarly, the odometer reading showing '0 kms' but duly registered by RTO will not override the conclusion that it is used. Please note that most appropriate tests for identifying whether the goods have been used or not may be examined. Also, this rule does not apply only to 'supply of second-hand goods' but to supply of services of person dealing in second-hand goods. In other words, disposal of leased car will also come within the operation of this rule.

Intra-State supplies of second-hand goods, by an unregistered supplier to a registered person, dealing in buying and selling of second-hand goods and who pays the central tax and compensation cess on the value of outward supply of such second hand goods as determined under rule 32(5) of the CGST Rules, is exempted. This has been done to avoid double taxation on the outward supplies made by such registered person, since such person operating under the margin scheme cannot avail input tax credit on the purchase of second-hand goods. *(Notification No. 10/ 2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 04/ 2017-Compensation cess (Rate) dated 20.07.201720)*

It is important to note that the registered taxable person disposing off used goods would not be able to avoid payment of tax on this outward supply. Facility under this 'margin method' is available only when the used good supply involving sale of used-goods is by an unregistered person to a registered taxable person dealing in used-goods. In the case of used-cars, the levy of tax on outward supply has completely taken the sheen off used-car business because registered sellers cannot avail this margin-method coupled with the visibly high rates of GST plus Cess applicable. However, the Government vide *Notification no. 8/2018-Central Tax (Rate) dated 25.01.2018* has reduced the rate of GST to 18% and 12% on the sale of old and used motor vehicles. Further, the Cess payable on sale of old and used motor vehicle has also been exempted vide *Notification no. 1/2018-Compensation Cess (Rate) dated 25.01.2018*. However, the major change as per the said notification was the valuation mechanism under GST. The said valuation was stated to be the margin involved i.e., the difference between the selling and purchase price. If the selling price is less than the purchase price/WDV (as the case may be), then this amount should be ignored for the purpose of GST. However, where the selling price is greater than the purchase price, only the differential margin will be taxable. In case of sale by a registered person, it has been stated that the value that needs to be taken in lieu of the purchase price will be the depreciated value of goods on the date of supply. So, the taxability arises in respect of the margin if the selling price is higher than the depreciated value of the motor vehicle,

Illustration: Mr. X, a registered person in GST had purchased a motor car on 01.06.2016 for ₹ 10,00,000. The said car was sold on 25.02.2018 by him for:

a) ₹ 9,00,000

b) ₹ 7,00,000

Determine the valuation under GST.

Ans: The depreciated value of the car as on 01.04.2017 is ₹ 10,00,000 – 0.15*10,00,000 = ₹ 8,50,000 (as per income tax law). If the sale value of the car is ₹ 9,00,000, ₹ 50,000 will be the value for charging GST. If the car is sold at ₹ 7,00,000, the margin will be negative and hence it should be ignored.

Repossession of goods in case of default by an unregistered borrower-

Proviso to rule 32(5) speaks about the repossession of goods in case of default by an unregistered borrower. In this scenario, the purchase price for the calculation of margin will be the purchase price of such goods by the defaulter. However, such purchase price will be subject to reduction of 5% every quarter or part thereof for the period between the date of purchase and the date of disposal.

Illustration: Mr. X took a car loan of ₹ 3,00,000 from ABC Bank Ltd. on 01.09.2022 which was entirely used for the purchase of car worth the same amount. Mr. X defaults on the loan balance and thereby his car is repossessed by the bank on 01.03.2023. This car is sold on 30.03.2023 by the bank for ₹ 2,50,000. Determine the valuation under GST.

Ans: The purchase value to be taken will be the purchase price in the hands of the borrower – 5% per quarter or part thereof (September – March) i.e., 3,00,000 – (5%*3*300,000) = ₹ 2,55,000. As the sale value of the car is below ₹ 2,55,000, the margin will be ignored for the charging of GST.

When such 'presumptive value' is opted for payment of tax, then it is NOT permissible for tax administers to attempt a 'second bite at the same cherry'. That is, once the tax is paid on the presumptive value, then the entire supply and consideration (from all sources) in respect of that same supply is NOT to be taxed. For e.g., travel agent who pays tax at 0.9% on domestic fare CANNOT be taxed again on the consideration received from (i) passenger called 'service charges' or (ii) airlines called 'commission' in monetary credits to agent's account or 'paid up tickets' at no charge to be sold for 'price' or (iii) 'share of commission' from CRS societies / companies where airlines list their inventory.

(v) Supply of voucher, the value will be the redemption value of the voucher. Please note voucher includes coupon, stamp, token, etc. Please refer to the discussion on vouchers under section 13 for the various forms that voucher can take including digital vouchers to which this rule will apply. Also, please note that those instruments that are approved by RBI and included in the definition of 'money' under the expression *"…..or any other instrument approved by RBI when used as a consideration to settle an obligation….."*

should not be treated as vouchers merely because they are popularly referred as 'vouchers'. All vouchers are not vouchers attracting this rule. Reference may be had to the discussion under section 12(4)/13(4) to identify instruments that 'are' or 'are not' vouchers.

Illustration: Mr. X had purchased a voucher for ₹ 200 which was redeemable against purchase of a wallet worth ₹ 500 from Shopping Stop. Here, the valuation that should be taken is the redemption value of ₹ 500 in respect of the voucher and not the purchase value of ₹ 200.

(vi) Supply of services between distinct persons, that are notified by Government and where input tax credit is available, the value of taxable services shall be deemed to be Nil. Clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 has been issued *vide Circular No. 199/11/2023-GST dated 17.07.2023*.

(h) Service of pure agent (Rule 33)

Agency supplies are different from 'pure agent' in relation to valuation. This rule applies only to supply of services. It provides for the exclusion from valuation of any supply of certain costs and expenses if and only if the following tests are satisfied:

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient; the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(ii) the supplies procured by the pure agent from the third party as a pure agent of recipient of supply are in addition to the services he supplies on his own account.

Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustrations:

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and

approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on Company B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Other such examples may be:

(a) Ticket in railways is booked by a travel agent on behalf of the customer and the charges for such ticket are recovered by the agent along with the commission by showing them separately.

(b) Customs duty, dock dues, transportation, port clearance charges etc. are paid by the customs broker on behalf of the importer and are recovered along with his commission from the importer.

(c) Advertisement charges to the newspaper are paid by Advertising agency on behalf of the customer and are recovered separately along with commission.

(d) In an ex-factory delivery contract, if the transportation charges are paid by the supplier on behalf of the recipient and are recovered separately from the recipient along with the price of the goods.

To establish that the conditions of pure agent are getting satisfied, it is recommended that there should be a written contract between the supplier and the recipient. The clauses of the agreement should clearly point to compliance with all the conditions as discussed above with regard to pure agent. This will act as the most reasonable defence if any questions are raised by the Department later on. However, even if the contract is not in writing, it can be established by other available evidence that the conditions of pure agent are satisfied. However, any contract in writing may be considered as more persuasive in nature.

Further, in order to claim any amount as a deduction in the form of a pure agent, the dealer will have to demonstrate with substantial evidence that the liability to incur the cost was on the recipient and that the dealer has incurred such cost merely for convenience's sake. Further, the dealer has to ensure that the invoice/ bill of supply/ receipt has been received in the name of the recipient, who is the ultimate beneficiary.

(i) Exchange rate to be used (Rule 34)

Transactions undertaken in foreign currency must be translated into Indian Rupees. The rate of exchange for the determination of the value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 and for the determination of the value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

Few clarifications / special methods of Valuation:

1. Value of undivided share of land involved in under-construction real estate transactions:

   As per paragraph 2 of the *Notification No. 11/2017-Central Tax (Rate) dated 23.06.2017*, in cases of construction contracts of residential/commercial apartments, complex, building, etc. involving element of land, the value of supply shall be total amount charged equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land. Where value of such transfer of land shall be deemed to be one third of the total amount charged for such supply. The relevant extract of aforesaid notification is as under:

   "In case of supply of service specified in column (3), in items (i), [(ia), (ib), (ic), (id), (ie) and (if)] against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

   Explanation.—For the purposes of this paragraph [and paragraph 2A below, "total amount" means the sum total of,—

   (a) consideration charged for aforesaid service; and

   *(b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sub-lease.***"**

   In this context, in case of *Munjaal Manishbhai Bhatt vs. Union of India [2022-HC-AHM-GST]*, the Honourable High Court held that: "*Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) and identical notification under the Gujarat Goods and Services Tax Act, 2017, which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra-vires the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. While maintaining the mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules, such deduction can be permitted at the option of a taxable person, particularly in cases where the value of land or undivided share of land is not ascertainable*".

2. Value of supply of service by way of transfer of development rights:

   Generally, the developer (who is also called as "promoter") does not purchase land for a real estate project. A landowner enjoys various rights with respect to the land, such as

cultivation rights, easement rights etc. One such rights is the right to develop the land into an agricultural, industrial, commercial, residential or for any other purpose. Hence, the promoter enters into an arrangement with the landowners, who transfers development right or permits activities on his land for consideration. The consideration can be in the form of constructed units on completion of the project or in monetary terms. When the landowner is given constructed units against the above referred right such agreement is popularly known as "area sharing agreement". On the other hand, when the landowner and the promoter agree to share the revenue earned from the sale of the constructed units, the same is called "a revenue sharing agreement". We can observe that in both the methods discussed above, the landowner transfers a right in favour of the promoter to secure all approvals for development and build an apartment on the landowner's property for sale.

Value of supply of such transfer of development rights by the landowner is determined under rule 27 of the CGST Rules.

More specifically, for value of supply of such transfer of development rights by the landowner we may refer to extract of FAQ in *Circular F. No. 354/32/2019-TRU dated 14.05.2019* stipulates as under:

Sl. No.	***Question***	***Answer***
6.	*In an area sharing model, a promoter has to handover constructed flats/apartments to the landowner who supplied TDR for the project. Value of TDR at the time when the landowner transferred it to the promoter is not known. How would the promoter determine GST on TDR?*	*Value of TDR, shall be equal to the amount charged by the promoter for similar apartments from the independent buyers booked on the date that is nearest to the date on which such development rights or FSI is transferred by the landowner to the promoter.*
7.	*In the formula prescribed under first proviso to Entry 41A of the Notification 12/2017-CT. (R), as amended by Notification 4/2019-C.T. (R), what rate shall be taken to determine the value to be ascribed to the "GST Payable on TDR or FSI or both for construction of the residential apartments in the project but for exemption contained therein" as no specific rate has been prescribed in Notification*	*The GST on transfer of development rights or FSI (including additional FSI) is payable at the rate of 18% (9% + 9%) with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 (heading 9972).* *There is no exemption on TDR or FSI (Addl. FSI) for construction of commercial apartments. Therefore, GST shall be payable on TDR or FSI (including additional FSI) or both used in respect of: -*

	11/2017-C.T.-Rate or any other notification? *What is the rate applicable to output supply of TDR or FSI?* *Whether the quantum of TDR or FSI (including additional FSI) or both shall be taken only in respect of unbooked apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula?*	*(i) carpet area of commercial apartment and* *(ii) unbooked residential apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula.*

3. *Circular No. 163/19/2021-GST dated 06.10.2021* has re-affirmed the 70:30 valuation principles in case of Solar power projects. In the circular, *vide* "*Para 13.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The issue seems to have arisen in the context of Notification No. 24/2018-Central Tax (Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1-1-2019."*

4. *Circular No. 115/34/2019-GST dated 11.10.2019* has clarified a finer aspect of valuation in respect of airlines "*…….Passenger Service Fee Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937. …….*

Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010, dated 13-9-2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue

…….services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST…….

2.8 …….. the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator."

Illustrations on Section 15 read with the CGST Rules:

Q1. Jaya purchases a Samsung television set costing ₹ 85,000 from an electronic shop, in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept ₹78,000 instead of his quote of ₹81,000, as he would still be in a profitable position (the old TV can be sold for ₹8,000).

Ans. Where the price is not the sole consideration for the supply, the 'OMV' would be the value of the supply. Therefore, ₹ 85,000 would be the value of the supply.

[Section 15(4) read with rule 27(a) of the CGST Rules]

Q2. Mr. X located in Manipal purchases 10,000 Hero ink pens worth ₹4,00,000 from LMP Wholesalers located in Bhopal. Mr. X's wife is an employee in LMP Wholesalers. The price of each Hero pen in the open market is ₹52. The supplier additionally charges ₹5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. X and LMP Wholesalers would not be treated as related persons merely because the spouse of the recipient is an employee of the supplier, although such spouse and the supplier would be treated as related persons. Therefore, the transaction value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: ₹4,05,000 (i.e., 4,000,000 + 5,000).

[Section 15(1) r/w Section 15(2)]

Q3. Sriram Textiles is a registered person in Hyderabad. A particular variety of clothing has been categorised as non-moving stock, costing ₹5,00,000. None of the customers were willing to buy these clothes in spite of giving big discounts on them, for the reason that the design was too experimental. After months, Sriram Textiles was able to sell this stock on an online website to another retailer located in Meghalaya for ₹2,50,000, on the condition that the retailer would put up a poster of Sriram Textiles in all their retail outlets in the State.

Ans. The supplier and recipient are not related persons. Although a condition is imposed on the recipient on effecting the sale, such a condition has no bearing on the contract price. This is a case of distress sale, and in such a case, it cannot be said that the supply is lacking 'sole consideration'. Therefore, the price of ₹2,50,000 will be accepted as value of supply.

[Section 15(4) r/w Rule 27(d) read with Rule 31 of the CGST Rules]

Q4. Rajguru Industries transfer stock of 1,00,000 units (costing ₹10,00,000) requiring further processing before sale, from Bijapur in Karnataka to its Nagpur branch in Maharashtra. The Nagpur branch, apart from processing units of its own, engages in the processing of similar units by other persons who supply the same variety of goods, and thereafter

sells these processed goods to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Nagpur unit. Goods of the same kind and quality are supplied in lots of 1,00,000 units each time, by another manufacturer located in Nagpur. The price of such goods is ₹9,70,000.

Ans. In case of transfer of goods between two registered units of the same person (having the same PAN), the transaction will be treated as a supply even if the transfer is made without consideration, as such persons will be treated as 'distinct persons' under the GST law. The value of the supply would be the OMV of such supply. If this value cannot be determined, the value shall be the value of supply of goods of like kind and quality. In this case, although goods of like kind and quality are available, the same may not be accepted as the 'like goods' in this case would be less expensive given that the transportation costs would be lower. Therefore, the value of the supply would be taken at 110% of the cost, i.e., ₹ 11,00,000 (i.e., 110% * 10,00,000).

However, if the Nagpur branch is eligible for full input tax credit, the value declared in the invoice will be deemed to be the OMV of the goods in terms of second proviso of Rule 28.

[Section 15(4) read with Rule 28(b) & (c) r/w Rule 30 of the CGST Rules]

Q5. M/s. Monalisa Painters owned by Ved is popularly known for painting the interiors of banquet halls. M/s. Starry Night Painters (also owned by Ved) is engaged in painting machinery equipment. A factory contacts M/s. Monalisa Painters for painting its machinery to keep it free from corrosion, for a fee of ₹1,50,000. M/s. Monalisa Painters sub-contracts the work to M/s. Starry Night Painters for ₹1,00,000, and ensures supervision of the work performed by them. Generally, M/s. Starry Night Painters charges a fixed sum of ₹1,000 per hour to its clients; it spends 120 hours on this project.

Ans. Since M/s. Monalisa Painters and M/s. Starry Night Painters are controlled by Mr. Ved, the two businesses will be treated as related persons. Therefore, ₹1,00,000 being the sub-contract price will not be accepted as transaction value. The value of the service would be OMV being ₹ 1,20,000 (i.e., ₹ 1,000 per hour * 120 hours)*.

Note: This view is based on the grounds that there are no comparable to this supply.

However, if M/s. Starry Nights is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the OMV of services i.e., ₹ 1,00,000/-

[Section 15(4) r/w Rule 28(a) of the CGST Rules]

Q6. Prestige Appliances Ltd. (Bengaluru) has 10 agents located across the State of Karnataka (except Bengaluru). The stock of chimneys is dispatched on just-in-time basis from Prestige Appliances Ltd. to the locations of the agents, based on receipt of orders from various dealers, on a weekly basis. Prestige Appliances Ltd. is also

engaged in the wholesale supply of chimneys in Bengaluru. An agent places an order for dispatch of 30 chimneys on 22.09.2022. Prestige had sold 30 chimneys to a retailer in Bengaluru on 18.09.2022 for ₹ 2,80,000. The agent effects the sale of the 30 units to a dealer who would affect the sales on MRP basis (i.e., @ ₹10,000/unit).

Ans. The law deems the supplies between the principal and agent to be supplies for the purpose of GST. Therefore, the transfer of goods by the principal (Prestige) to its agent for him to effect sales on behalf of the principal would be deemed to be a supply although made without consideration. The value would be either the OMV, or 90% of the price charged by the recipient of the intended supply to its customers, at the option of the supplier. Thus, the value of the supply by Prestige to its agent would be either ₹ 2,80,000, or 2,70,000 (i.e., 90%*10,000 * 30), based on the option chosen by Prestige.

[Section 15(5) read with rule 29(a) of the CGST Rules]

Q7. Mr. & Mrs. XYZ purchase 10 gift vouchers for ₹ 500 each from Crossword, and 5 vouchers from Four Fountains Spa costing ₹ 1,000 each and gives them as return gifts to children and their parents for their son's birthday party. The vouchers from Four Fountains Spa had a special offer for couples – services for both persons at the price chargeable to one.

Ans. The value of the supply would be the money value of the goods redeemable against the voucher. Thus, in case of vouchers from Crossword, the value would be ₹ 5,000 (i.e., ₹500 * 10) and the value of vouchers in case of Four Fountains Spa would be ₹ 10,000 (i.e., ₹ 1,000 * 2 * 5).

[Section 15(5) r/w Rule 32(6) of the CGST Rules]

Q8. In a rent of company accommodation, the rent received by the landlord is ₹ 30,000 per month. As per the said contract, the building maintenance to the tune of ₹ 3,000 per month is required to be paid by the landlord. In the month of March 2023, the tenant directly pays the building maintenance to the residential society and deducts the said amount from the total consideration of ₹ 30,000 and paid ₹ 27,000 to the landlord. Further, the tenant discharge municipal taxes of ₹ 2,000 in March 2023. Find the taxable value in the month of April 2018?

Ans. ₹ 3,000 represents the amount liable to be discharged by the landlord which has been paid by the tenant. So, ₹ 3,000 will be added to the actual price paid or payable of ₹ 27000 for the purpose of valuation. ₹ 2,000 will also be added to the taxable value as it is in the form of taxes, duties, cesses, fees, and charges levied under the law. So, the total taxable value will be ₹ 32,000.

[Section 15(2)(a) and Section 15(2)(b)]

15.3. For Reference

Valuation Rules in Customs, Central Excise and Service Tax have been tested for applicability in various circumstances. All that experience and judicial interpretation may be brought to

provide a good understanding of the words used in these Rules and the purpose for such usage. They are:

- Customs Valuation (Determination of Price of Imported Goods) Rules, 2007
- Customs Valuation (Determination of Price of Export Goods) Rules, 2007
- Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000
- Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008
- Service Tax (Determination of Value) Rules, 2006

15.4. Issues and Concerns

1. There appears to be concerns over the taxability of actionable claims in form of betting, gambling and horse racing as goods or services. The definition of goods specifically states that the actionable claims would qualify as goods for the purpose of GST law. When that being the case, seems appropriate to conclude that the actionable claim as goods and accordingly, the applicable rate of tax should be ascertained. This is based on the understanding that the notifications cannot overrule what is specified under the law.
2. A taxable person should be cautious in case of supply of services where the consideration is in kind, by way of receipt of other services. In such cases, it may appear that the services are supplied without consideration. However, it could result in barter and would qualify as barter.
3. The common expenses incurred by a taxable person in relation to procurement of services used by the branches located in another States, the allocation of such expenses to respective branches may qualify as supply of services. There appears to be an ambiguity on ascertaining the time of supply – whether, at the end of each month such taxable person should arrive at the cost to be allocated to respective branches and remit the tax accordingly or shall arrive at the cost to be allocated at the end of the year and remit the tax on the expenses allocated to branch for the whole year.
4. The discount after effecting the taxable supplies should be issued by credit notes. Section 34(2) states that the discounts should be issued before thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier. This necessarily means that discount can be issued to the recipient after the supplies are effected but not after the lapse of time period specified under section 34(2).
5. Every transaction seems to be covered by 'consideration.' It is important to carefully understand benefits, rewards and gratuitous contributions that do not amount to consideration under Contract law (see section 25 and 70 of the Contract Act,1872).

Chapter 6

Input Tax Credit

Sections	Rules
16. Eligibility and conditions for taking input tax credit	36. Documentary requirements and conditions for claiming input tax credit
17. Apportionment of credit and blocked credits	37. Reversal of input tax credit in the case of non-payment of consideration
18. Availability of credit in special circumstances	[1][37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof]
19. Taking input tax credit in respect of inputs and capital goods sent for job work	38. Claim of credit by a banking company or a financial institution
20. Manner of distribution of credit by Input Service Distributor	39. Procedure for distribution of input tax credit by Input Service Distributor
21. Manner of recovery of credit distributed in excess	40. Manner of claiming credit in special circumstances
	41. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business
	41A. Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory
	42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof
	43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases
	44. Manner of reversal of credit under special circumstances
	44A. Manner of reversal of credit of

[1] *Inserted vide Notification No. 26/2022 - CT dated 26.12.2022.*

	Additional duty of Customs in respect of Gold dore bar
	45. Conditions and restrictions in respect of inputs and capital goods sent to the job worker

Statutory Provisions

16. Eligibility and conditions for taking input tax credit

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both 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.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both 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 tax paying documents as may be prescribed;

[2][(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

[3][Explanation—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

[4][(ba) the details of input tax credit in respect of the said supply communicated to such

[2] Inserted vide The Finance Act, 2021 and notified through Notf No. 39/2021-CT dt. 21.12.2021, w.e.f. 01.01.2022.

[3] Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 read with Notf No.2/2019-CT dt. 29.01.2019 - w.e.f. 01.02.2019.

[4] Inserted vide The Finance Act, 2022 and notified through Notf No. 18/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022.

registered person under Section 38 has not be restricted.]

(c) subject to the provisions of [5][section 41 [6][~~or section 43A~~]], the tax charged in respect of such supply has been actually paid to the 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 39:

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be [7][paid by him along with interest payable under section 50] in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him [8][to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

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

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the [9][thirtieth day of November ~~due date of furnishing of the return under section 39 for the month of September~~] following the end of financial year to which such invoice or [10][~~invoice~~

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[5] Substituted for "section 41" vide The Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. a date yet to be notified.

[6] Omitted vide The Finance Act, 2022 notified through Notf No. 18/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022.

[7] Substituted vide The Finance Act, 2023, notified through Notf. No. 28/2023-CT dt. 31.07.2023- Brought into force w.e.f. 01.10.2023 for "added to his output tax liability, along with interest thereon".

[8] Inserted vide The Finance Act, 2023, notified through Notf. No. 28/2023-CT dt. 31.07.2023- Brought into force w.e.f. 01.10.2023.

[9] Substituted vide The Finance Act, 2022 notified through Notf No. 18/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022.

[10] Omitted vide The Finance Act, 2020 notified through Notf No. 92/2020-CT dt. 22.12.2020, w.e.f. 01.01.2021.

~~relating to such~~] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[11][Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019]

Extract of the CGST Rules

36. Documentary requirements and conditions for claiming input tax credit.

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document [12][~~, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person~~]:

[13][Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient

[11] Inserted vide Order No. 02/2018-CT, dt. 31.12.2018. [The Central Goods and Services Tax (Second Removal of Difficulties) Order,2018.

[12] Omitted vide Notf No. 19/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022.

[13] Inserted vide Notf No. 39/2018-CT dt. 04.09.2018.

and place of supply in case of inter-State supply, input tax credit may be availed by such registered person]

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

(4) [14][No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

(b) the details of [15][input tax credit in respect of] such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.]

[16][Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.]

[17][Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.]

37. Reversal of input tax credit in case of non-payment of consideration.

[18][(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply [19][whether wholly or partly,] along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16 , shall pay [19][or reverse] an amount equal to the input tax credit availed in respect of such supply [19][, proportionate to the amount not paid to the supplier,] along with interest payable thereon

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[14] Substituted vide Notf No. 40/2021-CT dt. 29.12.2021, w.e.f. 01.01.2022.
[15] Inserted vide Notf No. 19/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022.
[16] Inserted vide Notf No. 30/2020-CT dt. 03.04.2020.
[17] Substituted vide Notf No. 27/2021-CT dt. 01.06.2021.
[18] Substituted vide the Central Goods and Services Tax (Second Amendment) Rules, 2022 through Notf No. 19/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022
[19] Inserted vide Notf No. 26/2022-CT dt. 26.12.2022. Brought into force w.e.f. 01.10.2022.

under section 50 , while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16 :

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16 .

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).]

(3) [20][~~The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid~~.]

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier.

[21][37A: Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50 .

[20] Omitted vide Notf No. 19/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022.
[21] Inserted vide Notf No. 26/2022 - CT dt. 26.12.2022.

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.]

Related Provisions of the Statute

Section or Rule	Description
Section 17	Apportionment of credit and blocked credits
Section 31	Tax invoice
Section 34	Credit and debit notes
Section 39	Furnishing of returns
Section 41	Availment of input tax credit
Section 49	Payment of tax, interest, penalty and other amounts
Schedule I	Activities to be treated as supply even if made without consideration
Rule 54	Tax invoice in special cases
Rule 86	Electronic Credit Ledger

16.1 Introduction

Chapter V of the CGST Act deals with input tax credit. The credit of taxes paid on inputs, capital goods or input services against the output tax payable, forms the cornerstone in a GST regime. GST can be understood as a system of value-added tax on goods and/ or services. It is these provisions of input tax credit that make GST a value-added tax i.e., collection of tax at all points in the supply chain after allowing for credit of taxes paid on inputs/input services and capital goods. The invoice method of value-added taxation has been followed in the GST regime too, viz., the tax paid at the time of receipt of goods or services or both would be eligible for set-off against the tax payable on supply of goods or services or both, based on the invoices with a special emphasis on actual payment of tax by the supplier. The procedures and restrictions laid down in these provisions are important to make sure that there is seamless flow of credit in the whole scheme of taxation without any misuse.

16.2 Analysis

(i) <u>Relevant definitions:</u>

(a) **Taxable person (2(107)):** Means *a person who is registered or liable to be registered under section 22 or section 24*. As such, the liability to pay tax devolves on every 'taxable person' whether or not registration has been sought. But a careful reading of the input tax credit provisions makes it clear that input tax credit would be available only to a 'registered person' and to limited extent pre-registration credit are available under* section 18(1) (discussed later). Omission to obtain registration or cancellation of registration, result in forfeiture of input tax credits that may have otherwise been available, but demand for output tax remains, whether person is registered or not.

NOTE:

The difference between '*taxable person*' and '*registered person*' is important – they are two deliberately dissimilar phrases used in the law – and credit is allowed under section 16(1) only to a '*registered person*' whereas under section 9(1) tax levied is payable by every '*taxable person*' implying that the liability subsists even if not registered but credit is available only if registered.

(b) **Input tax credit**: means the credit of "input tax" in terms of section 2(63).

(c) **Input tax:** "Input tax" in terms of section 2(62) in relation to a registered person, means the Central tax, State tax, Integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes:

- integrated goods and service tax (IGST) charged on import of goods.
- tax payable on reverse charge basis under IGST Act/SGST Act/CGST Act/UTGST Act.
- but excludes tax paid as a composition levy.

Section 9(3) and 9(4) of the CGST Act [similarly section 5(3) and 5(4) of the IGST Act] levies tax on goods or services or both on reverse charge.

Therefore, 'input tax credit' is the tax paid by a registered person under the Act whether as a forward charge or reverse charge for the use in the course or furtherance of his business. It is interesting to note that in the definition of input tax credit, (i) transition credit is not included because transition credit is not tax paid under GST law but (ii) IGST paid on import of goods is included because IGST on imported goods is additional duty of customs equivalent to GST applicable on domestic goods.

(d) **Electronic credit ledger:** The input tax credit as self-assessed in the return of registered person shall be credited to electronic credit ledger in accordance with section 41, to be maintained in the manner as may be prescribed. [Section 2(46) read with Section 49(2)].

(e) **Capital goods** means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business [Section 2(19)]. It is important to note that Accounting Standard 10 permits capitalization of even 'services' when it is expected that the future economic benefits associated with it will flow to the enterprise and the asset has a cost or value that can be measured reliably. Thus, it can be inferred that:

- economic benefit is expected to be derived from the asset
- an asset is expected to be available for use by an entity for a long period of time, say, more than a year
- Cost of asset can be ascertained in monetary terms.

Services which are capitalized, as per AS10 and Ind AS16, will continue to be '*input services'*. GST law only admits *'goods'* to be capital goods and the treatment prescribed in

respect of '*capital goods'* will not apply in relation to services that are capitalized in accordance with AS10 and Ind AS16.

(f) **Input:** Input in terms of section 2(59) means:

- any goods,
- other than capital goods,
- used or intended to be used by a supplier
- in the course or furtherance of business.

It is important to note that prior to 'actual use' of the inputs, there is only an expectation or intention to use the said inputs '*in the course or furtherance of business'*. This is an example of a post-condition, that is, if the inputs which were intended to be used are later: (i) diverted to some non-business use or (ii) lost or destroyed such that they are not available to be so used, in such cases, the post-condition is not satisfied and input tax credit availed will be liable to be reversed.

(g) **Input service:** Input service in terms of section 2(60) means:

- any service
- used or intended to be used by a supplier
- in the course or furtherance of business.

It is important to note that 'services' is not a verb but a noun in GST. That is, there are instances when goods which are supplied are required to be 'treated as' supply of services in terms of section 7(1A) read with Schedule II. In such cases, tax paid on such goods will also be 'input service' for purposes of section 16. For example, software purchased or equipment lease rental under HSN 9973, will be input services.

(h) "**Works Contract**" in terms of Section 2(119) means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

It is important to note that 'works contracts' is not limited to civil construction although civil construction may be common under HSN 9954 in case of works contracts. True test of works contract would be the creation of an '*immovable property'* and not merely '*fixed installation'*. Refer discussion under section 2(102) [i.e., definition of services] regarding scope of 'immovable property' in the context of GST law and the principles available under other substantive laws.

(ii) <u>Section 16</u>

(a) **Registered person to take credit:** Every registered person subject to Section 49 (payment of tax), shall be entitled to take credit of input tax charged on any supply of

goods or services or both to him which are used or intended to be used in the course or furtherance of his business. The input tax credit is credited to the electronic credit ledger. Rule 36 of the CGST Rules provides that input tax credit can be taken on the basis of any of the following documents:

(i) Invoice issued under section 31 by Supplier of goods or services or both.

(ii) Debit note issued under section 34 by Supplier of goods or services or both.

(iii) Bill of entry or any similar documents under Customs Act or rules made thereunder for the assessment of integrated tax on imports.

(iv) Invoice prepared in respect of supplies made under reverse charge basis issued under section 31(3)(f).

(v) Invoice or Credit Note issued by ISD for distribution of credit in accordance with Rule 54(1) of the CGST Rules.

It is important to observe the words '*input tax charged on any supply of goods or services or both to him and 'in the course or furtherance of his business'* as appearing in section 16(1). The 'him' and 'his' refers to the registered (distinct) taxable person claiming input tax credit in question and not the legal entity. So, input tax paid in a State must not be in relation to the business of any other distinct taxable person in another State, albeit belonging to the same legal entity.

For example, A Company has Branch-A which is a registered taxable person in Andhra Pradesh conducts a conference in a hotel in Lonavla (Maharashtra) where CGST-MGST is charged by the hotel. This Company also has Branch-M which is a registered taxable person in Mumbai, now the provisions of section 16(1) operate as follows:

- CGST-MGST charged by the hotel in Lonavla (Maharashtra) is 'used in the business of Branch-A' in Andhra Pradesh and not in the business of Branch-M in Mumbai;
- Hotel would not be aware about the above fact and would not resist to issue the bill in the name of Branch-M because both are branches of the same Company;
- Since, CGST-MGST would be charged by the hotel, input tax credit would not be available to Branch-A as tax paid in Maharashtra is not a creditable tax in Andhra Pradesh;
- Moreover, Branch-M in Mumbai cannot justify this input tax credit as it is not **'*used*'** in **'*business*'** but it is '*used by another (distinct person)*' in '*that other (distinct persons) business*';
- Care should be taken to verify '*whose*' business each input tax credit relates to, that is, who is the exact distinct person eligible to each item of credit;
- In order to avail input tax credit, the Company ought to obtain ISD registration in Maharashtra and distribute this credit entirely to Andhra Pradesh;

- Alternatively, if nexus is established between the services of the hotel and the '*business*' of Branch-M, input tax credit may be availed by Branch-M. Nexus would be established if Branch-M were to provide inter-branch supply of services to Branch-A as an alternate to registering as ISD [more on feasibility of 'interoperability of cross-charge with ISD' discussed later].

Note - Input tax credit can also be taken on the basis of revised tax invoice.

(b) **Credit in case registration cancelled:** When 'registered person' is only entitled to take credit, registration is a pre-requisite to claim credit. And if registration once obtained is later cancelled, no further credits from the date of cancellation would be eligible. Not only that, as at the date of such cancellation reversal of credits under section 29(5) come into operation without any provision for refund of any surplus credit after such reversal too. Care must be taken that registration is not cancelled so that credits are not endangered. This aspect becomes significant while planning Mergers and acquisitions ("M&A") transactions where business is transferred on a given date to another existing or new entity. In all these transactions, 'credit preservation' would be a key component in the M&A transaction structure. Credits can be irretrievably lost if there were a break in the registration position of transferor or transferee. Reference may be had to section 85 and rule 41 for detailed discussion about credit transfer in such transactions.

(c) **Credit in case registration suspended:** Suspension of registration is not cancellation of registration. However, during the period of suspension, there is presumption of stoppage of business. As a result, inward supplies during suspension are not admissible as it does not augur with the fact of suspension of registration. Note that suspension may be the result of 'application' by taxable person as noted from rule 21A or some other failure by taxable person. It does not lie with the taxable person to make such application for suspension of registration pending settlement of all dues to enable cancellation of registration and at the same time assert the existence (and continuation) of business by claiming credit on inward supplies. As such, where registration is suspended, credit is not admissible due to the presumption contrary to the requirement in section 16(1) that such '*taxable person'* must be a '*registered person'* to claim input tax credit. It is interesting to note that credit will have to be allowed when cancelled registration is restored in appeal, and since appellate decision is a declaration that the decision in adjudication (to cancel registration) was not proper, claim of credit impaired due to inoperative login credentials (during the period of suspension-cancellation upto restoration in appeal) cannot be denied. This is a good example of exception to the operation of time prescribed in section 16(4) as Revenue cannot take advantage and prejudice taxpayer due to Revenue's own mistakes (which are overturned in appeal).

(d) **Wastage of inputs in the course of production:** Credit in respect of inputs that may have been wasted during the course of production of finished products does not cease to be *'used or intended to be used' in the course or furtherance of business*. As such, there is no restriction to read into the language of section 16(1). In fact, the full extent of

credit would be available whether the extent of wastage of inputs in the course of production of finished goods is within normal wastage norms. Unless there is a diversion of inputs (in respect of which credit has been availed), there is no embargo on taking and retaining input tax credit. Section 17(5)(h) restricts credit on *"goods lost"* since these can no longer be used for the purpose of business but does not provide for restriction of credits on 'loss of goods' which could be a process loss inherent to the nature of product on which credit has been availed. Therefore, "goods lost" must be given a completely different meaning as compared to 'loss of goods' during production / process.

While in-process loss occurring in the hands of manufacturer would not be *"goods lost"* but merely in-process loss'. But when such in-process loss occurs in the course of job work would receive different treatment, depending on whether the extent of such in-process loss is normal or abnormal. Further, where there is any (in-process) loss of inputs, credit claimed by the principal would be undisturbed provided such norms are demonstrable in trade practices. And where such in-process losses are beyond norms in trade, to this extent, inputs will tantamount to 'not returned to Principal after processing' and attract the incidence of tax under section 19(3) (discussed later).

It is interesting to note that the requirement in section 16(1) is that inward supplies must be 'used' in the course or furtherance of business (and where it is 'intended to be used' at the time of receipt of inward supplies, it must eventually be actually used). Where there is inefficient use, that is there is a 'loss' of inward supplies, there is no doubt that they were 'used' although not very efficiently. For this reason, experts hold the view that inward supplies that are 'actually used' will be admissible as input tax credit and whether such use has been efficient or otherwise is beyond the reach of GST law. Reference may be had to decision of the CESTAT in *Ashok Leyland Ltd. v. CCE, Nagpur [2004 (169) ELT 131 (Tri. Mumbai)]* where inputs damaged in 'shop stores' were held to be 'in process losses' and inputs damaged in 'raw material stores' were held to be 'pre-process losses'.

Where inward supplies (of goods) are 'lost', then section 17(5)(h) comes to block input tax credit for the reason that they are not 'used' in the course or furtherance of business. And this follows the ratio in Ashok Leyland's decision that unless the inputs are 'used' (in the business) they will not be considered as 'used' and when they are 'lost' then, admittedly they are not 'used' and will fail the test in section 16(1).

(e) **Input-Output nexus:** While Cenvat Credit Rules, allowed credit on input and input services used for manufacture of excisable goods or for rendering taxable services. The credit under GST law is available on procurements which are "used" or "intended to be used" in the course or furtherance of business. It is important to note the difference between '*use in manufacture'* (Cenvat) *versus* '*used in business*' (GST) which is much broader terminology in GST. Actually, used must be shown even if at the time of

availing credit. Inward supplies were received into stock with intention to use later for stated purposes and this is referred as 'actual end-use' which is a post-condition to avail input tax credit [discussed later in para (k) below]. Hence, any procurement though not having any direct or immediate connection with the manufacture of finished products or rendering of outward supplies, would also qualify for input tax credit so long as it is "used or intended to be used" for the purpose of business. For e.g., stationery used in the office of Managing Director at Mumbai has no correlation with the equipment manufactured at the Company's factory in Aurangabad but the credit of tax relating to such stationery would be available since it is "used or intended to be used" for the purpose of business.

(f) **Required "One-to-one correlation" of credit from unrelated businesses with single GSTIN only for 'availment' and not 'utilization':** There is a well-accepted principle in any value added tax system to inquire whether the given set of rules requires 'one-to-one correlation' for credit admissibility or utilization. An example may present this principle better. Say, a Proprietor runs a furniture trading business in Indore, Madhya Pradesh and a software services business in Jabalpur, Madhya Pradesh. If the given tax system does not permit cross-utilization of credit (validly availed) in the furniture trading business with the output liability in the software services business then, it can be said that, that tax system requires '*one-to-one correlation*'. But, if another tax system (which GST is) allows such cross-utilization, then it can be said that 'one-to-one correlation' is NOT required. Taking this principle into the furniture business, credit availed in respect of inputs (or input services or capital goods) purchased in the furniture business in Indore may be utilized for payment of output tax in the software services business in Jabalpur. As long as all credits and corresponding output tax liability are contained within one single GSTIN, such cross-utilization is freely permitted. However, absence of one-to-one correlation applies at the point of 'utilization' and not at the point of 'availment'. For purpose of availment, continuing with facts in the same example, credit availed in Indore must pass the 'used in business' test to be admissible in Indore before being available for 'utilization' to discharge output tax of Jabalpur. If the credit availed in Indore fails the test, then notwithstanding its utilization (in anticipation) in Jabalpur, will be liable to be repaid when later developments reveal that underlying goods were not actually used in the business at Indore.

(g) **Credit involved in sunk costs of abandoned and unfructified projects:** While new businesses may have certain aspects to be examined (i) date from when business is said to be commenced (ii) date when inputs are actually used in business, these are aspect where income-tax appears to be more liberal than GST law. This may be presented with the following examples:

- Say, in case ('A') a mineral exploration company applies for 10 sectors to search (or prospect) for mineral deposits, discovers 8 sectors to have deposits, finalizes 6

sectors to be viable for extraction and extracts minerals only in 4 sectors. Here, it may be stated that it is the nature of this industry that in order to identify which are those 4 viable sectors to extract mineral, prospecting costs must be incurred on all 10 sectors. There are judicial authorities that allow expenditure in unsuccessful sectors (areas where mineral deposits expected) as admissible deduction in arriving as gross total income for income-tax purposes because that is the nature of the business and only by starting with all 10 sectors can the company reach those 4 viable sectors to extract deposits and generate income.

- Now, say in case ('B') a film production company launches 3 films and it has paid writers and purchased the scripts for all 3 films and then paid fees to directors/actors for 2 films and finds distributors for only 1 film. Now, in computing gross total income for the film business of this production company, expenditure on film 1 and 2 are not '*used in business'* against income earned from film 3. Here, expenditure incurred on film 1 and 2 may be treated as a '*loss-making ventures'* to be set-off against income from film 3 which is 'profitable venture'.

  As to the correctness of the treatment in income-tax is a matter that turns on its unique provisions in income-tax law but for GST purposes the treatment depends on these aspects to be considered –

  (a) factual tests in case A and case B are not identical, in case A it is the nature of the business to 'spend on several to earn from few' and in case B, it is clear that there loss-making ventures have no contributory value to the profitable venture.

  (b) requirement in section 16(1) is 'actual end-use' so that there is output tax due. And where inward supplies do not result in output tax, credit is ineligible [see section 17(2) and 17(5)(h) for explanation].

  (c) although there is no requirement for 'one-to-one correlation' in GST, non-use of inward supplies is not going to pass muster of 'actual end-use' for credit to be admissible. And if non-use (leading to taxable outward supplies) was not a criteria then, section 17(2) and 17(5)(h) would be otiose. Now, without laying down any rule of a direct link between credit in GST and costs in such projects that are abandoned or unfructified, experts caution that admissibility of credit under section 16(1) in these cases cannot be free from further inquiry.

(h) **Credit involved in 'capital or debt' raising activities:** There are a host of instances due to 'remoteness' of connection between taxable outward supplies and the expenditure involving GST credit. Experts caution that absence of a specific embargo in, say, section 17(5) for such cases is reason enough to claim credit but consider that these expenditures have been riddled with controversy and contested as to whether they are 'used in business'.

(i) **Costing-pricing inter-relationship:** The cost of inputs on which credit has been availed will not be included in the pricing of the product and consequently, not included in the transaction value – this may create a concern as to whether this credit is admissible or not. As explained by Supreme Court *in case of CCE, Pune v. Dai Ichi Karkaria [1999 (112) ELT 353]*, the nature of Modvat scheme is such that the cost of purchase of inputs lowered because credit, does not immediately, directly and proportionately impact the assessable value of the finished product manufactured using the inputs.

(j) **GST credit is subject to '*conditions precedent*' and '*conditions subsequent*':** GST law has laid down certain conditions in sections 16 to 18 of the CGST Act. Some of these conditions are 'before' claiming input tax credit, some are 'after' claiming credit. It is true that *in Eicher Motors Ltd. v. UoI [1999 (106) ELT 3 (SC)],* it was held that Modvat credit is an '*indefeasible right*'. But, every 'right' becomes 'indefeasible' after it is 'vested' and not before. Rights are relevant only when it is legally recognized and by that recognition enforceable in a Court of law for infringement by others who threaten its enjoyment by its holder of those rights. If these attributes are missing, then it is not a right but a mere reward or a benefit allowed due to magnanimity of law. And by that reason, it can be taken away without reason or explanation. But lawful rights once vested become indefeasible and until they are vested, these rights are 'inchoate' (or in formation), that is, there are not 'yet' vested. Non-fulfilment of vesting conditions operates as divesting conditions.

It would be of interest to note that in *ALD Automotive Pvt. Ltd. v. CTO & Ors. (2019) 13 SCC 225* credit was held to be a 'benefit or concession' under the statutory scheme following *TVS Motor Company Ltd. v. State of TN & Ors. 10560-10564 of 2018 (SC)* held that tax credit is a form of 'concession' that cannot be claimed as a matter of 'right', relying on *Jayam & Co. v. ACCT & Anr. (2016) 15 SCC 125*. These decisions were all rendered in the context of TNVAT Act.

Now, identification of 'vesting conditions' would be very important to demonstrate the nature of credits. Since credits are capable of 'settling' liability (to output tax by process of 'utilization') to say that credits are 'benefits or concessions', would imply that output tax liability is 'reduced' when credits are utilized. It is trite law that output tax remains what was in the invoice and it is 'discharged' via utilization of credits. So, relying on elucidation in *Dai Ichi Karkaria's* decision, which was not the approach in (i) Jayam or (ii) ALD or (iii) TVS, it appears that credits are inchoate rights, subject to satisfaction of all (pre and post) conditions and are rights, nevertheless. And only rights can settle liabilities. Rights vest when vesting conditions are satisfied. Vesting conditions not satisfied operate as divesting conditions.

If the vesting conditions are satisfied, then the rights are vested and hence, indefeasible. As a corollary, unless the rights are vested, they remain 'in choate' and can be taken away by operation of law. The law that can take away 'in choate rights'

may be (a) conditions linked to vesting or (b) prescription. Conditions linked to vesting of input tax credit in GST, can be found in section 16(2), among others. Notice that every 'taxable person' is liable to pay tax (and be compelled, in accordance with the law prescribed, to pay the tax levied) but only a 'registered person' is eligible to 'take' credit. Care must be taken of the 'effect' of these two central aspects, namely, (a) conditions linked to vesting or (b) prescription. If any of these central aspects are not satisfied, then even if credit may be temporarily allowed, will need to be returned back. And until *'conditions precedent'* are not satisfied, credit cannot be taken and in case '*conditions subsequent'* are not satisfied, credit (provisionally) taken must be paid back or returned. Below is a list of conditions linked to claim of input tax credit:

<table>
<tr><th colspan="2">Pre-conditions</th><th colspan="2">Post-conditions</th></tr>
<tr><td>Registration</td><td>16(1)</td><td>Payment to supplier within 180 days</td><td>Rule 37</td></tr>
<tr><td>Filing of Form GSTR - 1 by Supplier (to enable it to appear in Form GSTR -2A/ 2B to Recipient)</td><td>16(2)(aa)</td><td rowspan="2">Actual end-use in making taxable outward supplies which are not (i) exempt under Notification No. 12/2017-CT(R), dt.28.06.2017 or (ii) treated to be exempt by conditions in tariff notifications [see expln. 4(iv) to Notification No. 11/2017-CT (R), dt. 28.06.2017]]</td><td>17(1), 17(2), 17(5)(h) and 18(4)</td></tr>
<tr><td>Possession of valid tax invoice</td><td>16(2)(a)</td><td></td></tr>
<tr><td>Delivery of goods or services (complete and effective)</td><td>16(2)(b)</td><td>Not blocked (default)</td><td>17(5)</td></tr>
<tr><td>Credit matching via GSTR-2B</td><td>16(2)(ba)</td><td>Steps to 'claim-reverse-restore' credit belatedly matched</td><td>Rule 37A</td></tr>
<tr><td>Payment of tax by supplier</td><td>16(2)(c)</td><td>Not ineligible (special category)</td><td>Tariff conditions (Rate Notf.)</td></tr>
<tr><td>Credit show in return filed</td><td>16(2)(d)</td><td>Time limit to claim credit</td><td>16(4)</td></tr>
</table>

(k) **Time limit to avail the input tax credit:** A registered person is not entitled to avail input tax credit on tax invoice/ debit notes after the [30th November of the subsequent

financial year w.e.f. 01.10.2022, earlier it was, due date of furnishing of the return under section 39 for the month of September of the subsequent financial year] or furnishing of the relevant annual return, whichever is earlier. In fact, not only is registration a pre-requisite (see, 'registered taxable person' alone will be entitled to claim credit) but filing of return under section 39 is also a requirement. Input tax credit is a right that does not 'vest' until the last of conditions in section 16(2) are fulfilled. Until then, this right i.e., input tax credit is *inchoate* (or incomplete or in-formation) and not yet a vested right.

Rights that are not yet vested can lapse by limitation unless effective steps to actualize those rights are taken by the person. And once the right stands vested, it becomes indefeasible except by operation of subsequent inherent conditions. In other words, input tax credit which is a right (in law) of the taxable person is not fully mature and is not available to the taxable person until all pre-conditions (steps to actualize available rights) have been fulfilled or performed. Section 16(2) lays down these steps that can be fulfilled immediately or in course of time. And only when all these steps are fulfilled, the right that is 'available' becomes a right that may be 'availed'. After the credit is actually availed (by including in **Form GSTR-3B**), it will be ready for utilization without any time for utilization or any age for its expiration.

Section 18(4) provides a condition (which is informed at the time of availing credit) that credit availed will be liable to be reversed if output tax is exempt at the time of making such outward supply. Other than this situation, all credit availed (after meeting all pre-conditions and post-conditions) will be permanently and indefeasibly available as a vested right to the taxable person. Now, in a situation where the credit is 'available' is somehow delayed and 'not taken', it would still be available but not beyond the limitation prescribed in section 16(4). Once the limitation period prescribed in section 16(4) sets in, the credit which is 'not availed' by virtue of the limitation prescribed is proper, in view of the principle of reaching finality in respect of all 'available' credits that may 'not' be intended to be availed. Experts suggest that in case of doubt, one can avail the credit and then reverse under protest with intimation to Revenue. This would ensure that the time limitation would not be the reason for not taking ITC once clarity emerges from Courts.

Section 16(4) provides for time limit for taking credit for invoices and debit notes. Bill of entry is not mentioned in section 16(4) and hence it appears that there is no time limit for taking credit in case of bill of entry.

It would be important to note that the due date for availing credit from debit notes received is based on the date of which the debit note is issued regardless of the year in which the original supply was made. Section 34(3) refers to *"shall issue to the recipient, one or more debit notes for supplies made in a financial year"*. Reference to "*financial year* "is qua debit note and not the qua original supply made.

Illustration:

Document Type	Document Date	Last date for taking credit *
Invoice	05.07.2021	last returns to be filed within 30th November 2022
Debit Note	05.04.2021 (Debit Note relates to invoice raised on 05.01.2021)	last returns to be filed within 30th November 2022
Debit Note	05.05.2022 (Debit Note relates to invoice raised on 05.01.2021)	last returns to be filed within 30th November 2023

** Assumed that Annual Returns have been filed after the 30th November.*

(l) **Time limit 'limitation' or 'prescription':** Although time limit prescribed in section 16(4) or even 18(2) for that matter, has been referred to as 'limitation' (in above discussions), care must be taken to note the difference between 'limitation' and 'prescription**'. "***Limitation is when a right continues but is no longer enforceable after lapse of certain time"*. For e.g., input tax credit taken by the exporter in case of zero-rated supplies, the exporter is eligible to claim refund. In the event refund is not filed within 2 years from relevant date, the refund is barred. And this does not mean the credit is liable to be reversed. It will continue and may be utilized to pay any output tax by the same exporter. Here, the 2-year time limit to claim refund (on zero-rated supplies made) is a limitation. Notice that the right (input tax credit) remains but it is no longer enforceable (even though condition of making zero-rated supplies is met) to receive refund. *"Whereas, prescription is when the right itself vanishes after lapse of specified time"*. For e.g., 'right' to input tax credit (that has clearly satisfied all vesting conditions) itself vanishes by lapse of this time limit specified in section 16(4). When vested rights are extinguished, it is referred as 'extinguishing prescription'. And when rights extinguish, they vest in another person, it is referred as 'acquisitive prescription'. Rights extinguish in taxpayers and go on to be acquired, by operation of law, by State.

(m) **Stale invoices v. belated returns:** Section 16(4) places an absolute embargo where the right (to credit) stands extinguished by operation of prescription in law (discussed above). There are two categories which cannot be equated with each other, namely:

- Stale invoices omitted in returns filed – In respect of inward supplies during PY (say, FY 2022-23) where credit is admissible but omitted to be included in the return when all returns up to 30th Nov of FY (i.e. 30.11.2023) are filed. This is a category where the invoice belonging to PY has become 'stale' due to omission from being included in all the returns filed for entire PY as well as in FY (till 30th Nov);

- Valid invoice in returns filed belatedly – In respect of inward supplies during PY where credit is admissible and included in returns of any month of PY but filed belatedly in FY (after 30th Nov), say, in Dec. Payment of late fee eclipses the delay and belated returns are also admitted as valid returns.

To equate both these 'categories' would be to 'paint them with the same brush'. When one taxpayer allowed an invoice to go 'stale' is determined to make an assertion that credit from that invoice is not to be claimed. Positive assertion cannot be implied but must be express. And extinctive prescription requires affirmative action. Another taxpayer who did not make any such assertion (by filing returns and omitted credit invoice(s)) but regularized the delay by filing late fee and when the law permitted filing of returns, payment of late fee overcame the effect of delay, and in such returns claimed all admissible credits, and made a positive assertion.

There is nothing in the scheme of the law to treat both these 'categories' on the same plane. Following instances shows that belated returns are admissible, and the time prescribed in section 16(4) will not bar the credit:

- When section 7(1)(aa) was introduced from 01.01.2022 with effect from 01.07.2017, no corresponding amendment was introduced in section 16(4) for the reason that no such 'saving clause' is necessary to save the credits. Taxpayers (clubs and associations) filing their first returns on 20.02.2022 are not filing returns 'of' Jan 2022 but 'for' the tax period 01.07.2017 to 31.01.2022. Without any saving clause, they are allowed all credits since 01.07.2017 as the returns filed 'on' 20.02.2022 purports, consequent to a retrospective amendment inserting a legal fiction to eclipse the principle of mutuality, becomes the returns 'of' Jul 2017, Aug 2017 and so on up to Jan 2022.
- When a taxpayer's registration has been suspended and then cancelled. Taxpayer may apply for revocation of cancellation within 90 days or appeal for its restoration filed in 3 months. And when revocation is allowed or appeal permits restoration, the effect of this decision is that (i) decision to cancel registration is overturned and (ii) credits that could not be claimed due to blocking of login credentials are restored. Since Government cannot take advantage of its own mistake
  (of cancelling registration which is overturned later) and there is no saving clause to permit credits that could not be claimed during the intervening period (between cancellation and restoration), returns filed on restoration with late fee will include claim of admissible credits.

While this the construction of the plain words of the statute, the enthusiasm with which Revenue is raising demands under section 16(4), a definitive ruling from the Courts is required to expose the difference between stale invoices v. belated returns.

(n) **Deemed receipt of goods:** Section 16 permits a registered person to avail credit only after he has received the said goods or services or both. However, in case of bill to-ship to transactions (including where such goods are sent for job work), by which the registered person instructs his Supplier to ship the goods to another person on his behalf, the date of receipt of goods by such other person shall be deemed to be the date of receipt of goods by the said registered person.

Therefore, what exactly does 'received, mean in this context? Does it refer to actual receipt of goods at factory premises or even constructive receipt of goods would suffice? Broadly, receipt of goods may be said to be complete when goods have been supplied as per the Recipient's instructions and the Supplier is discharged from any further liability on such goods. The delivery must be complete in all respects to the utmost satisfaction of the recipient. The point of acceptance in cases of pre-requisite of quality control may have to be clear.

For example, when goods imported by a registered person are supplied directly to his customers in India from the port without bringing such imported goods (physically) to his factory premises. The importer would still be entitled to ITC of IGST paid on imported goods although such goods were never received at his factory premises, provided that all the import formalities are fulfilled.

The bill to ship to model is applicable in case of services also. However, please note that this fiction for delivery of goods or services is not an attempt at encroaching upon the Place of Supply provisions of IGST Act but merely to satisfy the conditions for taking credit in certain cases where someone else collects goods or enjoys services.

(o) **Goods received in instalments:** If goods are received in instalments against a single invoice, credit can be availed upon receipt of last instalment of goods.

Illustration – A consignment of coal is to be dispatched from Kolkata to Mumbai using five trucks. An invoice was issued to the recipient on 30.03.2021. Four trucks reached the claimant by 30.03.2021 but the truck carrying the final lot of the consignment reached the recipient only on 02.04.2021. In this case, input tax credit for the entire consignment can be availed only in the month of April 2021.

(p) **Receipt of Services:** The recipient can claim credit only upon receipt of services except a situation mentioned in Explanation to Section 16(2)(b). In the commercial world, while it is easy to demonstrate receipt of goods (by way of physical stock, e-way bill, GRN etc), services are not amenable to such proof-of-delivery due to their transient and intangible nature. Determination of actual receipt of services could be a formidable task especially when the contracting period for provision of service extends beyond a tax period but consideration is received in advance.

Explanation to Section 16(2)(b) has been amended to include services. It has been stated that the registered person will be deemed to have received the services where the services are provided by the supplier to any person on direction of and on account of such registered person. Experts see that this amendment could be followed

retrospectively even though the amendment does not state it to be retrospective. Reference may be had to tools of interpretation of statutes which state that ssubstantive vested rights cannot be taken away even by an Amending Act. Drafting tools like 'proviso' and 'explanation' are often used to bring about an amendment. A *proviso* carves out an exception to advance the object and suppress the mischief sought to be overcome by the extant law. An *explanation* aids in more accurately expressing the legislative intent that always was. As important as it is to understand the 'nature and scope' of amending provisions; Of equal importance is the 'effect' of these amendments. It is common understanding that when amendments are clarificatory, they will be retrospective, but when they are substantive, they will be prospective. Date of notification brings the amended law into the statute book but merely because amended law takes facts, that occurred previously into consideration, it does not make it an *ex post facto* law and come under challenge. Supreme Court in *Sundaram Pillai v. Pattabiraman [1985 AIR 582 SC*] laid down some guiding principles of the effect that these drafting tools – proviso and explanation – can have on the construction of the amended law by the amendments so made. And for advancing the mischief that occurred before the explanation to section 16(2) whereby credit could have been denied even though those services are delivered 'on behalf of' the Recipient, this explanation would deserve retrospective effect for being clarificatory in nature to avoid the mischief.

The person receiving any services may be different from the person who is liable to make the payment as the recipient under the law. The definition of recipient under the GST law has been defined to mean the person liable to make the payment. However, there are multiple cases where the payment is made by a particular person, but the services are received by another person. In such a situation, the person liable to make the payment will be deemed to have received the services.

For instance, X is providing advisory services to Z for which the payment is agreed to be made by Y. In this situation, Y will be deemed to have received the services as per the new deeming fiction in the Explanation to Section 16(2). Thereby, Y will be allowed to avail input tax credit even though he is not in actual receipt of the services.

(q) **Failure to pay to supplier of goods or services or both, the value of supply and tax thereon:** Where the Recipient (of goods or services or both) has failed to pay the Supplier within 180 days from date of invoice, input tax credit availed, in proportion to such unpaid amount of the invoice shall be reversed by adding to Recipient's output tax liability along with interest as may be applicable. And on payment of the value of the invoice, amount of credit reversed may be reclaimed without any time limit as per rule 37(4). It is to be noted that (i) credit available must be availed within the time limit in section 16(4) and any delay beyond this time limit will result in available credit being forfeited permanently (ii) credit once availed [within the time limit in section 16(4)] but reversed under rule 37(1) may be reclaimed under 37(4) and this time without any time limit to reclaim reversed credit. Refer discussion under section 63 where the expression 'fails' is examined in detail and the same expression is found in rule 37. Given that the

usage of the expression 'fails' is not akin to 'deliberate breach' of terms of contract, parties cannot state to a contrary when the law places this embargo. Again, Courts will need to get the final say.

One may note that as per experts, the aforesaid condition does not apply to supplies that are liable to tax under reverse charge. It would also not be applicable where a person is not required to make the payment of consideration itself. For instance, a recipient is not liable to pay a part of the consideration because of receipt of post-sale discount without the receipt of GST credit note.

While reverse charge is excluded from the condition of having to make payment within 180 days, GST paid on import of goods does not fall within the ambit of reverse charge under section 9(3) or 9(4) of the CGST Act or Section 5(3) or 5(4) of IGST Act although IGST paid on import of goods is akin to reverse charge. The question that now arises is - whether there can be reverse charge liability other than under section 9(3) and 9(4). The definition in section 2(98) does not permit such extended application.

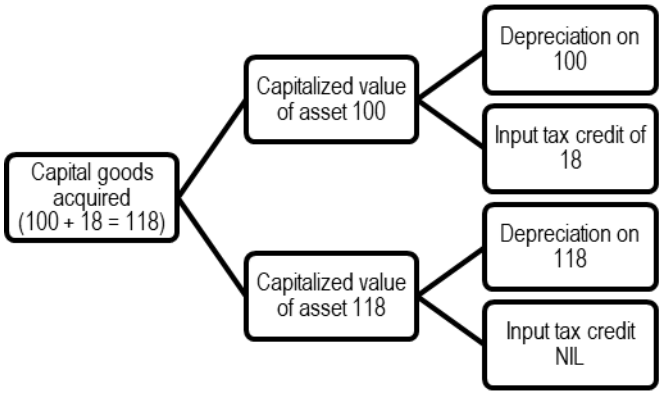
The privilege to prescribe pre-conditions for vesting of right to input tax credit belongs to section 16 and therefore, there is no other provision from where any overriding right to claim credit on goods imports may be borrowed or imputed. On the other hand, IGST paid under reverse charge on import of services is covered under Section 5(3) of the IGST Act as a result of which an importer of service would be entitled to credit of IGST paid even if payment to the service provider remains unpaid beyond the said period of 180 days.

It would be relevant to note that Section 15 of the CGST Act deals with valuation of supplies and provides for adjustment in the value of supply in case the price is not sole consideration or if the transacting parties are related by recourse to the Rules. Such adjustment to the transaction price being made for only GST purposes (to arrive at the tax payable) but commercially, such amount is neither recorded in the books nor paid by the transacting parties. Hence in all such cases where additions are made to the value of supply, Recipient will not be denied input tax credit since even though payment is not made to the extent of such additions. CGST Rules have been amended w.e.f. 13.06.2018 to provide that in cases where consideration is in non-monetary form, whether supplies under Schedule I or even such additions to transaction price, they will be deemed to have been paid by the Recipient to Supplier.

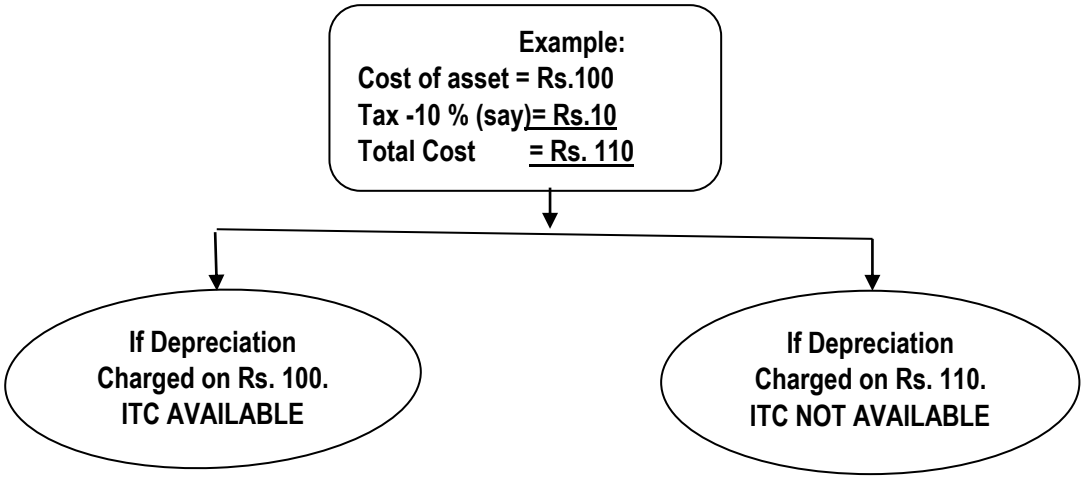
Another aspect to consider is section 63 of Indian Contract Act where consideration (payment) in respect of executed contracts may be accepted lesser than originally contracted (but at the desire or volition of Promisee). Although this is contrary to the terms agreed, it is provided in Indian law for Seller to accept less than originally agreed owing to the time value of money and the certainty that comes with immediate payment. When less amount is accepted in place of more amount that was due, it does not give rise to remedy of specific relief or relief of repudiation of contract as it is already

executed. Such admitted reduction in consideration is enforceable under the original contract and does not amount to amendment of original contract or substitution with new contract again for the reason that it is already executed. Now, for GST purposes it is important to note that credit note needs to be issued in such instances because the value originally agreed is more than what is payable provided such credit note is issued within the time limit prescribed in section 34. However, paying less than originally agreed would attract reversal of credit (in hands of Recipient-Payer) under rule 37 and this condition is linked to credit note under section 15(3)(b)(ii) regarding reversal of corresponding amount of credit.

(r) **Capital goods on which depreciation is claimed:** Input tax credit will not be allowed on the tax component of the cost of capital goods and plant and machinery if depreciation on such tax component has been claimed under the provisions of the Income Tax Act. This does not imply that credit of the cost of inputs may still be claimed as revenue expenditure. That is not true because AS 2 states that '*cost of purchase does not include taxes subsequently recoverable from a taxing authority*'. Experts express that accounting method followed in respect of inputs cannot be deviated from accounting method in case of input services.



Depreciation claimed on Tax Component of the cost of capital goods under IT Act ⇒ **ITC not Available**



(s) **Unmatched credit capped at 'x' per cent':** Section 16(2)(c) places a burden on Recipient to claim credit 'after' tax has been deposited with the Government by the supplier. This clause operates like a 'condition precedent' to claim credit.

Government's response to this 'impossible eventuality' is that credit cannot be given in respect of tax not received by exchequer. To balance the two sides, Government has enabled **Form GSTR-1** filed by Suppliers to appear **in Form GSTR-2A/2B** to the Recipient. Though this by itself is no assurance that Supplier has subsequently filed **Form GSTR-3B** (for the entire turnover reported in **Form GSTR-1**) but Government considers '*liability to tax admitted in **Form GSTR-1**'* as basic responsibility that must be ensured. Remember, condition precedent in section 16(2)(c) has not been amended regarding this 'matching' process. And if credit appears in **Form GSTR-2A/2B** (by Supplier filing **Form GSTR-1**), that will give some assurance to permit credit to Recipient. Recipient may still claim credit unilaterally without any formal credit matching by claiming *bona fide* credits in **Form GSTR-3B**.

Rule 36(4) has been inserted *vide Notification No. 49/2019-CT, dated 09.10.2019* and it applies to all returns filed after 09.10.2019, that is, to September returns as well.

This sub-rule states that eligible credits appearing in **Form-GSTR 2A/2B** will be allowed [total credits minus ineligible credits under sections 17(2), 17(5), etc.]

On one hand, condition precedent in section 16(2)(c) continues to hover over the taxpayer's shoulders, on the other hand, the **Form GSTR-2A/2B** based 'quasi matching' exercise is allowed with additional relief as follows:

- 20 per cent from 09.10.2019 to 31.12.2019;
- 10 per cent from 01.01.2020 to 31.12.2020;
- 5 per cent from 01.01.2021 to 31.12.2021; and
- NIL from 01.01.2022.

Relaxations were provided while filing of returns for the period February to August 2020 applicable on a cumulative basis for these months while filing of return for September 2020.

Further Relaxations were provided while filing of returns for the period April to June 2021 applicable on a cumulative basis for these months while filing of return for June 2021 or quarter ending June 2021.

The sub-rule updated as on date states that no relaxations for further periods will be allowed, the registered person is allowed to avail the credit to the extent of credit as appearing in GSTR-2B.

(t) **Rule 37A - Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof**

New rule 37A has been inserted vide *Notification No. 26/2022-CT dated 26.12.2022* to specify the mechanism for reversal of input tax credit already availed by the recipient in Form GSTR-3B. As per the said rule, where supplier has furnished the details of invoice or debit note in Form GSTR-1 or IFF but return in Form GSTR-3B has not been furnished by the supplier till 30th September of subsequent financial year, the input tax credit availed by the recipient shall be reversed along with interest.

However, if recipient reverses the ITC already availed in Form GSTR-3B on or before 30th November of the succeeding financial year, then the recipient is not required to pay interest on such reversal amount. If recipient reverses ITC after 30th November, then he is liable to reverse the amount of ITC along with interest as per section 50.

The recipient may re-avail the amount of ITC in Form GSTR-3B after the supplier furnishes the Form GSTR-3B.

(u) **Innovative reprieve (2A/2B v. 3B):** With the introduction of (i) new GSTR-3B (ii) new section 41 and (iii) rule 37A, taxpayers are to avail credit based on books (supported by valid tax invoice in respect of eligible inward supplies) but 'temporarily park' them in table 4B2 (of new GSTR3B) so that admissible credit is not lost due to operation of section 16(4) pending resolution of the mismatch with respective Supplier. While this may provide some relief, rule 37A now opens up doors for 'doubtful' credits to be temporarily parked without any risk of mounting interest or threat of penalties. Such credits will not be available to be utilized but will be safe from the perils of losing it due to uncertainties surrounding any interpretation issues.

(v) **Perils of credit:** Section 155 makes it incumbent on registered person to satisfy the eligibility conditions and compliances to take credit. Credit cannot be forced into registered persons hands by law or its officers. If credit that could have been taken is omitted for any reason, then that credit lost forever. Similarly, where eligibility to any exemption were to be turn out to be inadmissible, input tax credit that could have been claimed had it been known that tax was actually payable on the outward supply, cannot

be allowed if the time limit prescribed has passed. Where credit has been taken on the notion that tax is applicable on outward supply, credit so taken (and / or utilized) will be recoverable. With the amendment to section 41 overcoming the concept of 'provisional' credit, taxpayers are left to make a determination of admissible / inadmissible credits and enter perils associated with any errors in self-assessment. Decisions under Cenvat credit scheme that are popularly referred as 'revenue neutral' are unlikely to guide interpretation in GST as the incidence of tax is on every point of outward supply with credit for taxes paid on inward supplies. Reference may be had to *CCE (A), Ahd v. Narayan Polyplast [2005 (179) ELT 20 (SC)]* and *CCE, Vadodara v. Narmada Chematur Pharmaceuticals Ltd. [2005 (179) ELT 276 (SC)]*.

(w) **Credits *via* debit notes**: there is no time limit in section 34 to issue debit notes. And where any additional tax becomes payable, except in demand under section 74, Suppliers issue debit notes to Recipients (of respective supplies made earlier) who will be entitled to claim credit on those debit notes. Date for reckoning section 16(4) operates from date of debit note and not date of underlying invoice for supply.

In summary, among others the following facts are crucial for taking input tax credit:

(a) Claimant should be registered under the GST Law to avail the input tax credit (except for certain exceptions covered under Section 18)

(b) Goods or services must be used or intended to be used in the course or furtherance of his business.

(c) Possession of original tax Invoice/Supplementary Invoice/ Debit note/ ISD invoice/ Bill of Entry and other related documents is a must.

(d) Such tax invoice must contain all the particulars prescribed / specified in Chapter VI of the CGST Rules. It may be noted that the tax invoice or such other document can contain additional details other than those prescribed but NOT LESS than the details required in terms of Chapter VI of the CGST Rules- '*Tax Invoice, Credit and Debit Notes'*. However, this requirement has been relaxed w.e.f. 04.09.2018, by virtue of proviso to rule 36(2), inserted *vide Notification No. 39/2018-CT., dated 04.09.2018*. Registered person can avail input tax credit if the documents contain the following minimum details:

   a. Amount of tax charged

   b. Description of goods or services

   c. Total value of supply of goods or services or both

   d. GSTIN of the supplier and recipient

   e. Place of supply in case of inter-State supply

(e) Supplier of goods and/ or services must upload the details of such documents on the common portal i.e., GSTN.

(f) Vesting condition for claiming input tax credit includes filing return under section 39 and not making supply out of such inward supplies.

(g) Claimant should have received the goods / services. Input tax credit in case of supplies in installment, would be on receipt of last installment of goods.

(h) The law cast an obligation on the recipient of supply availing credit to effect payment to the supplier within a period of 180 days from the date of invoice. If such payment is not effected/partially effected by the recipient to the supplier, rule 37 obligates reversal/proportionate reversal of input tax credit so availed leading to consequential levy of tax and interest.

Proviso to section 16(2) provides that the taxable person shall be entitled to avail input tax credit after making payment of the amount towards value of supply of goods or services or both along with tax payable thereon. Further, rule 37(4) provides that the time limit specified under section 16(4) shall not be applicable in case of reclaim of credit.

(i) Claim of depreciation on the GST component disqualifies a recipient of Capital goods and plant and machinery from taking input tax credit.

(j) W.e.f. 01.10.2023, ITC cannot be availed after the 30th November of the next financial year or on furnishing the annual return whichever is earlier. However, prior to 01.10.2023, it cannot be availed after due date of filing the return for September month of the next financial year or on furnishing the annual return whichever is earlier.

(k) No registered person is permitted to avail any input tax credit pursuant to an order of demand on account of fraud, willful misstatement, or suppression of fact.

Note: The last point is important as many of the cases in a routine manner the show cause notice would invoke these mala fide intentions and if not contested, the ITC would not be available to the receiver even if otherwise eligible. Refer discussion under section 75(2) and consider the consequent effect on credit when the demand under section 74 is downgraded to demand under section 73.

Note -1: It is pertinent to mention that CBIC vide *Circular No. 183/15/2022-GST dated 27.12.2022* has clarified how to deal with difference in Input Tax Credit (ITC) availed in Form GSTR-3B as compared to that detailed in Form GSTR-2A for FY 2017-18 and 2018-19. Further, CBIC vide *Circular No. 193/05/2023-GST dated 17.07.2023* has clarified how to deal with difference in Input Tax Credit (ITC) availed in Form GSTR-3B as compared to that detailed in Form GSTR-2A for the period 01.04.2019 to 31.12.2021.

16.3 Issues and Concerns

(i) A consignment of coal is to be dispatched from Kolkata to Mumbai through five trucks for which the invoice was sent along with the first truck. Four trucks reached the claimant by 30.03.2021 but the truck carrying the final lot of the consignment falls down

a gorge and is never received. Would this deny the input tax credit that should otherwise have been available on coal received on the first four lots? The answer is 'No'. Once the supply is complete, credit is admissible to the extent of quantity received if the remainder of the quantity would not be replenished by Supplier.

(ii) Section 16 allows a recipient of supply to avail credit only when he has received the goods or services or both. For example, in an annual maintenance contract entered into on 15.12.2022, Supplier is under an obligation to render services arising over a period of 12 months (ending 14.12.2023) but in respect of which an invoice is raised and consideration is received on the date of entering into the agreement i.e., 15.12.2022 in this case. In such cases, input tax credit contained in the said invoice is left hanging in the balance considering the fact that input tax credit in respect of an invoice received during the year cannot be claimed after the 30th date of November of the succeeding year. In the given case, the receipt of service is said to be completed (i.e., AMC period ends) on 14.12.2023, while the time limit for claiming credit is 30.11.2023. Possible solution to overcome this situation could be to convert the AMC into Monthly / Quarterly Maintenance Contracts, if agreeable to the supplier. Alternatively, could it be interpreted that an AMC, is primarily an assurance which is received on the date of entering into the AMC and what follows is only a continuing obligation of the supplier and hence the service may be deemed to have been received on the date of commencement of the AMC. The above issue also arises in case of an insurance contract. It is possible for one to interpret or read down the law in such cases since every business operates on a concept of going concern. These issues would most certainly be put to test in the times to come.

(iii) In case of a recipient who has reversed credit on account of non-payment of consideration within 180 days, can he avail credit in instalments as and when the payment is made to the supplier or should he reclaim the credit only when the entire amount including taxes has been paid to the supplier. Given that the third proviso to Section 16(2)(d) allows availing of credit on payment of 'the amount towards the value of supply of goods or services or both' and not 'an amount', reading strictly it may be construed that the entire amount would have to be paid for availing of credit earlier reversed. Consideration paid which is non-monetary form is also a consideration and for the scheme to work one needs to read harmoniously. It is a common practice that some deductions are there in the invoice without GST being deducted. Then can it be said that the whole consideration has not been paid and credit denied until the whole amount with taxes paid? The credit should be available for value deductions by customer without impacting the GST as well as non-monetary payments.

(iv) Transition credit is not input tax credit although it is allowed to be utilized to discharge liability to output tax. Transition credit wrongly availed or utilized when demanded as (i) inadmissible transition credit under rule 121 read with section 73 or 74 cannot support any demand for interest under section 50 or penalty under section 122(2) but (ii) as output tax undischarged due to utilization of inadmissible transition credit, then interest under section 50(1) and penalty under section 122(2) would be applicable.

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period. [*Circular 195/07/2023-GST dated 17.07.2023*]

Case 1: The original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty.

The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. Therefore, in cases where no separate consideration is charged by the manufacturer at the time of such replacement/repair services, no GST is to be levied on such replacement of parts and/ or repair service during warranty period. However, GST is levied in case additional consideration is charged for the same.

These supplies cannot be considered as exempt supply as original supply is likely to include the cost of replacement/repair services to be incurred during warranty. Hence, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.

Case 2: The distributor provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer without charging any consideration from the customer.

Where no consideration is charged by the distributor from the customer, no GST is payable by the distributor on the said replacement/repair services provided during warranty period. In case additional consideration is charged, GST shall be payable.

The treatment relating to the input tax credit and output liability relating to the replaced products will be as follows:

a) In cases where the distributor replaces the part to the customer under warranty either by using his stock or by purchasing it from third party and charges the consideration of the same from the manufacturer, by issuance of a tax invoice then GST would be levied on the consideration charged by the distributor from the manufacturer. The manufacturer is eligible to take input tax credit of the same, subject to other GST provisions. Further, no reversal of input tax credit by the distributor is required in respect of the same.

b) In case where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty, then no GST would be payable, if no additional consideration is charged by the manufacturer in respect of parts replaced. Further, no reversal of input tax credit is required by the manufacturer is required in respect of same.

c) In cases where the distributor replaces the part to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note u/s 34 in respect of the parts replaced. The tax liability may be adjusted by the

manufacturer, subject to the condition that the distributor has reversed the ITC availed against the parts so replaced.

Case 3: The distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services.

As per section 2(93)(a) of the CGST Act, 2017, in this case, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair service. Hence, GST shall be payable by the distributor on such supply of service to the manufacturer and the manufacturer would be entitled to claim input tax credit in respect of the said supply.

Statutory Provisions

17. Apportionment of credit and blocked credit

(1) *Where the goods or services or both are used by the registered 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 or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act, 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.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

[22][Explanation. -For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, [23][except-

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.]

(4) 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

[22]Inserted vide The CGST (Amendment) Act, 2018 w.e.f. 01.02.2019 read with Notf No. 2/2019-CT dt. 29.01.2019.
[23] Substituted vide The Finance Act, 2023 to be effective from 01.10.2023 by Notf No. 28/2023-CT dt. 31.07.2023.

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 and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number

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

(a) [24][motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely: —

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely: -

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or

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[24] Substituted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019 read with Notf No. 2/2019-CT dt. 29.01.2019. Prior to such substitution it read as:" (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"

clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) [25][the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

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

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

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force].

(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

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[25] Substituted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019 read with Notf No. 2/2019-CT dt. 29.01.2019. Prior to such substitution it was read as: "(b) the following supply of goods or services or both –

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

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

(iii) rent-a-cab, life insurance and health insurance except where –

(A) 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; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

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

supply of works contract service;

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

Explanation. - For the purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

[26][(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;]

(g) goods or services or both used for personal consumption;

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

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation. For the purposes of this Chapter and Chapter VI, the expression 'plant and machinery' means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

(i) land, building or any other civil structures,

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises

Extract of the CGST Rules

38. Claim of credit by a banking company or a financial institution.

A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the

[26] Inserted vide The Finance Act, 2023, Notified through Notf. No. 28/2023-CT dt. 31.07.2023- Brought into force 01.10.2023.

following procedure, namely,-

(a) the said company or institution shall not avail the credit of-

(i) the tax paid on inputs and input services that are used for non-business purposes; and

(ii) the credit attributable to the supplies specified in sub-section (5) of section 17; [27]*[~~, in FORM GSTR-2~~]*

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);

(c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution [28]*[and the balance amount of input tax credit shall be reversed in FORM GSTR-3B];*

(d) [29]*[~~the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.~~]*

42.Manner of determination of input tax credit in respect of inputs or input services and reversal thereof

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as 'T';

(b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T_1';

(c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T_2';

(d) the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T_3';

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[27] Omitted vide Notf No. 19/2022- CT dt. 28.09.2022, w.e.f. 01.10.2022.

[28] Substituted vide Notf No. 19/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022 for "and shall be furnished in FORM GSTR- 2".

[29] Omitted vide Notf No. 19/2022- CT dt. 28.09.2022, w.e.f. 01.10.2022.

(e) *the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C_1' and calculated as-*

$C_1 = T- (T_1+T_2+T_3)$;

(f) *the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T_4';*

[30]*[Explanation: For the purpose of this clause, It is hereby clarified that in case of supply of services covered by clause (b) of Paragraph 5 of Schedule-II of the said Act value of T_4 shall be zero during the construction phase because inputs and input services will be commonly used for the construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date].*

(g) *'T_1', 'T_2', 'T_3' and 'T_4' shall be determined and declared by the registered person* [31]*[~~at the invoice level in **FORM GSTR-2 and**~~]* [32]*[at summary level in **FORM GSTR-3B**];*

(h) *input tax credit left after attribution of input tax credit under clause* [33]*[(f)] shall be called common credit, be denoted as 'C_2' and calculated as:*

$C_2 = C_1- T_4$;

(i) *the amount of input tax credit attributable towards exempt supplies be denoted as 'D_1' and calculated as*

$D_1= (E÷F) \times C_2$

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

[34]*[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:-*

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after the issue of completion certificate or first occupation, whichever is earlier;

F=aggregate carpet area of apartments in the project;

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30 *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019, w.e.f. 01.04.2019.*
31 *Omitted vide Notf No. 19/2022 – CT dt. 28.09.2022, w.e.f. 01.10.2022.*
32 *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019, w.e.f. 01.04.2019.*
33 *Substituted vide Notf No.16/2019-CT dt. 29.03.2019, w.e.f. 01.04.2019 for "(g)".*
34 *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019.*

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till date of issuance of completion certificate or first occupation of the project, whichever is earlier

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified of items (i), (ia), (ib), (ic) or (id), against serial number 3 of the table in the Notification No. 11/2017-Central Tax (Rate), published in Gazette of India, Extraordinary, Part II, Section 3 subsection (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended].

[35][Provided further] that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available , the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purpose of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [36][and entry 92A] of List I of the Seventh Schedule to the constitution and entry 51 and entry 54 of List II of the said schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D_2', and shall be equal to five per cent. of C_2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C_3', where,-

$$C_3 = C_2 - (D_1+D_2);$$

*(l) [37][the amount 'C_3','D_1', and 'D_2' shall be computed separately for the Income tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B** or through **FORM GST DRC-03**]*

*(m) the amount equal to aggregate of 'D_1' and 'D_2' shall be [38][reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03]**;*

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[35] Substituted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019 for" Provided".

[36] Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019.

[37] Substituted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019 for "(l) the amount 'C3' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;".

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T_1' and 'T_2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T_4'.

(2) [39]*[Except in case of Supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax credit] determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-*

(a) where the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2', such excess shall be [40]*[reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**] in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or*

(b) *where the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.*

(3) [41]*[In case of supply of services covered by clause (b) of Paragraph 5 of Schedule II of the Act, the input tax determined under sub rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to the change of rates of tax on 1st April, 2019 in accordance with notification No.11/2017-Central Tax (Rate), dated 28th June, 2017, published vide GSR No. 690(E) dated 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July 2017, whichever is later , to the completion or first occupation of the project, whichever is earlier before the due date of furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub rule with the modification that value of E/F shall be calculated taking value of E and F as under:*

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[38] *Substituted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019 for "added to the output tax liability of the registered person:"*

[39] *Substituted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019 for "The input tax credit"*

[40] *Substituted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019 for "added to the output tax liability of the registered person"*

[41] *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019*

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F=aggregate carpet area of the apartments in the project;

and,-

a) *where the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts determined under sub rule (1) in respect of 'D_1' and 'D_2', such exceeds shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first completion of the project takes place and the said person shall be liable to pay the interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment ; or*

b) *where the aggregate of the amounts determined under sub rule (1) in respect of 'D_1' and 'D_2' exceeds the aggregate of the amount calculated finally in respect of 'D_1' and 'D_2' such excess amount shall be claimed as credit by the registered person in his return for the month not later than the month of September following the end of financial year in which completion certificate is issued or first occupation takes place of the project.*

(4) *In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub rule (1) shall be calculated finally for the commercial portion in each project, other than the residential real estate project (RREP),which underwent transition of input tax credit consequent to changes of rates of tax on 1st April 2019 in accordance with notification No. 11/2017-Central tax (Rate), dated 28th June 2017 published vide GSR No. 690(E) dated 28th June 2017, as amended for the entire period from the commencement of the project or 1st July 2017 or whichever is later, to the completion or first occupation of the project whichever is earlier, before the due date of furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.*

(a)The aggregate amount of common credit on commercial portion in the project ($C3_{aggregate_comm}$) shall be calculated as under,

$C3_{aggregate_comm}$=[aggregate of amounts of C3 determined under sub rule (1) for the tax periods starting from 1st July 2017 to 31st March, 2019 x (A_c/A_T)] + [aggregate of amounts of C3 determined under sub rule (1) for the tax period starting from 1st April 2019 to the date of completion or first occupation of the project, whichever is earlier]

Where,-

A_c = total carpet area of the commercial apartments in the project

A_T = total carpet area of all apartments in the project

(b)The amount of final eligible common credit on commercial portions in the project ($C3_{final_comm}$) shall be calculated as under

$$C3_{final_comm} = C3_{aggregate_comm} \times (E/F)$$

Where,-

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = A_C = total carpet area of the commercial apartments in the project

*(c) where, $C3_{aggregate_comm}$ exceeds $C3_{final_comm}$, such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;*

(d) where, $C3_{final_comm}$ exceeds $C3_{aggregate_comm}$, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub- rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub rule (3)].

43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively

*for effecting exempt supplies shall be indicated in [42][~~**FORM GSTR-2**~~] [43][**FORM GSTR-3B**] and shall not be credited to his electronic credit ledger;*

(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be indicated in [44][~~FORM GSTR-2~~] [45][FORM GSTR3-B] and shall be credited to the electronic credit ledger;

[46][Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date].

(c) [47][the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such

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[42] Omitted vide Notf No. 19/2022-CT dt. 28.09.2022, w.e.f. 01.10.2022.

[43] Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019.

[44] Omitted vide Notf No. 19/2022 - CT dt. 28.09.2022, w.e.f. 01.10.2022.

[45] Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019.

[46] Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019.

[47] Substituted vide Notf No. 16/2020-CT dt. 23.03.2020 w.e.f. 01.04.2020 for "(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A, being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods:
Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'Tie', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed :
Provided further that the amount 'Tie' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.
Explanation. - An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause."

capital goods were covered by clause (a),denoted as 'T_{ie}', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed:

*Provided further that the amount 'T_{ie}' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**.*

Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.]

(d) [48]*[the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'T_c', shall be the common credit in respect of such capital goods:*

Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'T_c';]

(e) *the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as-*

$$T_m = T_c \div 60$$

[49]*[Explanation.- For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.]*

(f) [50]~~*[the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods;]*~~

(g) *the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as-*

$$T_e = (E \div F) \times T_r$$

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[48] *Substituted vide Notf No. 16/2020-CT dt. 23.03.2020 w.e.f. 01.04.2020 for "the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'Tc', shall be the common credit in respect of such capital goods:*
Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'Tc';

[49] *Inserted vide Notf No. 16/2020-CT dt. 23.03.2020 w.e.f. 01.04.2020.*

[50] *Omitted vide Notf No. 16/2020-CT dt. 23.03.2020 w.e.f. 01.04.2020.*

where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover [51][in the State] *of the registered person during the tax period:*

[52]*[Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:*

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended].

[53]*[Provided further] that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of E/F' shall be calculated by taking values of E' and F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of E/F' is to be calculated;*

Explanation.- For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [54]*[and entry 92A] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;*

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[51] *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019*

[52] *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019*

[53] *Substituted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019 for "'Provided"*

[54] *Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019*

(h) *the amount 'T_e' along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.*

(i) [55]*[The amount T_e shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in* ***FORM GSTR-3B****].*

[56]*[(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te^{final}) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under:*

Te^{final}= [(E1 + E2 + E3) /F] x Tc^{final},

Where,-

E1= aggregate carpet area of the apartments, construction of which is exempt from tax
E2= aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, -

E2= [Carpet area of such apartments] x [V_1/ (V_1+V_2)],-

Where,-

V_1 is the total value of supply of such apartments which was exempt from tax; and

V_2 is the total value of supply of such apartments which was taxable

E3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

Tc^{final}= aggregate of A^{final} in respect of all capital goods used in the project and A^{final} for each capital goods shall be calculated as under,

A^{final}= A x (number of months for which capital goods is used for the project/ 60) and,-

(a) *where value of Te^{final} exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in* ***FORM GSTR-3B*** *or through* ***FORM GST DRC-03*** *in the month not later than the month of September following the end of the financial year in which the*

[55] *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019*

[56] *Substituted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019 for "(2) The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax."*

completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or;

(b) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Te^{final}, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation.- For the purpose of calculation of Tc^{final}, part of the month shall be treated as one complete month.

(3) The amount Te^{final} and Tc^{final} shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule(2).

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used];

[57][Explanation [58][1]:- For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) [59][~~the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017~~;]

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking

[57] Substituted vide Notf No. 03/2018 – CT dt. 23.01.2018. Prior to substitution it read as: "Explanation. - For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017."

[58] Renumbered vide Notf No. 16/2019-CT dt. 29.03.2019, w.e.f. 01.04.2019.

[59] Omitted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019.

financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) [60]*[~~the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India~~]].*

(d) [61]*[the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017.]*

[62]*[Explanation 2: For the purposes of rule 42 and this rule,-*

(i) the term ―apartment shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) the term ―project shall mean a real estate project or a residential real estate project;

(iii) the term "Real Estate Project (REP)'' shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)

(iv) the term "Residential Real Estate Project (RREP)'' shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP

(v) the term "promoter" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(vi) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(vii) "Commercial apartment" shall mean an apartment other than a residential apartment;

(viii) the term "competent authority'' as mentioned in definition of ―residential apartment, means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land

[60] *Omitted vide Notf No. 38/2023- CT dt. 04.08.2023.*
[61] *Inserted vide Notf No. 14/2022-CT dt. 05.07.2022.*
[62] *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019*

under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;

(x) the term —carpet area‖ shall have the same meaning assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xi) an apartment booked on or before the date of issuance of completion certificate or first occupation of the project shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xii) The term "ongoing project'' shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

(xiii) The term —project which commences on or after 1st April, 2019, shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended];

[63][Explanation 3:- For the purpose of rule 42 and this rule, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.]

[63] *Inserted vide Notf. No. 38/2023- CT dt. 04.08.2023 w.e.f. 01.10.2023.*

Related Provisions of the Statute

Section or Rule	Description
Section 2(47)	Definition of 'Exempt Supply'
Section 2(119)	Definition of 'Works Contract'
Section 16	Eligibility and conditions for taking input tax credit
Section 18	Availability of credit in special circumstances
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
Section 129	Detention, seizure and release of goods and conveyances in transit
Section 130	Confiscation of goods or conveyances and levy of penalty
Schedule II	Activities or transactions to be treated as supply of goods or supply of services
Rule 45	Conditions and restrictions in respect of inputs and capital goods sent to the job worker
Section 16 of IGST Act	Zero Rated Supply

17.1 Introduction

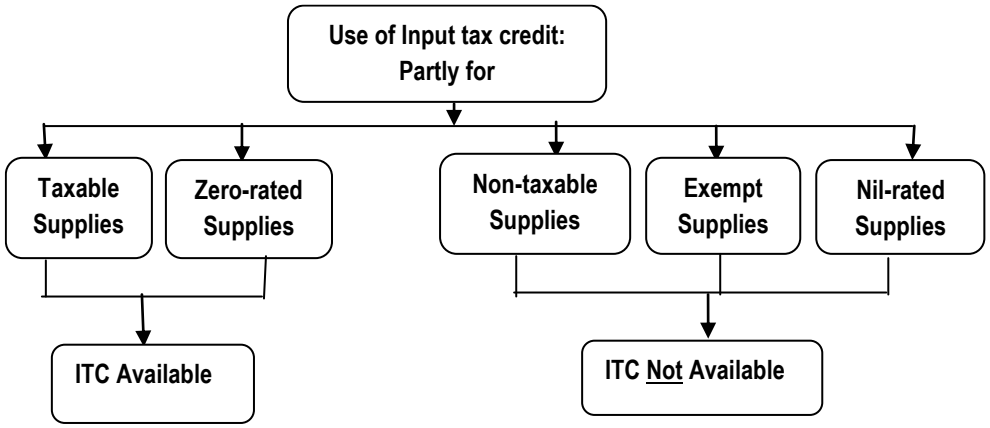
The input tax credit eligibility is based on the fact as to whether the goods or services or both are used for taxable supplies or exempt supplies. Where the goods or services or both are used for both taxable and exempted supplies, only proportionate credit is allowed to a registered person, Further, this section provides for a list of supplies that are ineligible for input tax credit.

17.2 Analysis

(a) Proportionate credit:

ITC based on usage in business

ITC based on use of Inputs



Note: -Attribution of ITC to be made as per Rule 42 of the CGST Rules

Exempt supply includes (i) supplies with tariff rate without credit and (ii) supplies taxable on RCM

Alternative to apportionment between taxable and exempt supplies in case of banking companies and financial institutions.

Yearly option to avail a standard rate of 50 % of eligible ITC on inputs, capital goods and input services on a monthly basis

(b) Definition of 'exempt supply': It is very interesting to note that although an exempt supply is defined in section 2(47), section 17(3) read with explanation (2) in rule 45 for purposes of input tax credit reversal includes the following transactions as well:

- tax paid under reverse charge,
- transaction in securities,
- sale of land and subject to clause (b) of Paragraph 5 of Schedule II, sale of building.

Thus, in a way, exempt supply for the purpose of section 17(3) means all such transactions that come within the sweep and ambit of section 2(47) and such other transactions listed in section 17(3) – is this permissible under law?

Please note that the value of supplies in respect of which the outward supplier is not liable to pay tax, but the recipient is made liable to pay tax under sections 9(3) and 5(3) of the CGST and IGST Act respectively, would be regarded as 'exempt supplies' for the limited purpose of determining net available input tax credit. Doubts have been raised whether such supplies should be included as exempt supplies by the recipient who pays the tax under reverse charge. In this context, it would be relevant to note that section 17(3) identifies supplies attracting reverse charge to be an exempt supply in the hands of the Supplier effecting such supplies and not in the hands of the recipient who avails such services liable under reverse charge.

Explanation added to Section 17(3) is an important amendment to allow taxpayer to avail full credit even if they are not paying GST if the activities or transactions are mentioned in Schedule III except sale of land and completed building and sale of warehoused goods to any person before clearance for home consumption. As such, it is important to note that transactions listed in Schedule III are "*NOT SUPPLIES*" and hence they are neither 'exempt supplies' nor are they '*non-taxable supplies'*.

For E.g., Sale of goods on high seas or merchant trading transactions will not entail any reversal of input tax credit as they are covered under Schedule III after the amendment.

The CGST (Amendment) Act, 2018 read with *Notification No. 2/2019-C.T., dt. 29.01.2019*

An explanation has been added to Section 17(3) to provide that value of exempt supplies shall not include transactions listed under Schedule III (transactions which are treated "neither as a supply of goods nor a supply of services") except sale of Land and Completed Building. Thus, no credit would be required to be reversed for engaging in transactions referred under Schedule III though no GST is paid on such transactions.

Amendment has been made in Schedule III covering following transactions – Supply of warehoused goods before clearance for home consumption and Supply of Goods from one non-taxable territory to another without the goods entering India. No reversal of credit would be required for engaging in these transactions. Experts hold the view that saving from reversal of credit was a treatment that all entries in Schedule III qualify for. And the fact that these supplies (high sea sales and in-bond sales) have been inserted in Schedule III and not included as an exemption under section 11 makes it clear that reversal of credit is NOT to be followed from inception of GST in July 2017. View of the Courts would finally decide on this matter but taxpayers at the risk of interest demand, take a provisional view whether to retain credit or reverse credit on these 'no supply' transactions.

Explanation to Section 17(3) substituted by The Finance Act, 2023

Explanation to section 17(3) has been substituted vide The Finance Act, 2023, the new provision will be applicable from 01.10.2023. As per the new provision, value of exempt supply shall not include value of exempt transactions listed under Schedule III (transactions which are treated "neither as a supply of goods nor a supply of services") except (i) sale of Land and Completed Building (Para 5 of Schedule-III) and (ii) value of supplies listed in paragraph 8(a), Schedule III. Thus, no credit would be required to be reversed for engaging in transactions referred under Schedule III other than para 5 and para 8(a), though no GST is payable on such transactions.

(c) Reversal of credit based on 'condition of end-use' – inputs and input services

Input tax credit is admissible based on certain conditions (refer discussion on 'vesting conditions' for input tax credit under section 16 (above) which comprises of precedent conditions or subsequent conditions). Registered persons are responsible for meeting all requirements to correctly claim input tax credit as per section 155. Now, when goods (inputs or capital goods) are received, credit of input tax paid is eligible subject to accepting and

agreeing to meet all the associated conditions. But when these goods are NOT USED as accepted and agreed (at the time of taking credit), for whatever reason, then credit availed ought not to have been availed and becomes liable for reversal.

Now, let us examine two provisions dealing with the disqualification that arises after having admitted that credit taken would meet all the associated conditions:

Description	Section 17(1)	Section 17(2)
Goods or services received	Both	Both
Intended to be USED in the course or furtherance of business	Yes	Yes
Actual USE	**Non-business**	**Business**
Outward supply is 'actually' taxed	**N.A.**	**No**
Outward supply is 'non-supply'	N.A.	Yes

From the above table, it is evident that at the time of taking credit, there must be '*intention'* to use the goods or services for purposes of '*business*' but subsequently changes due to some new development or supervening inconvenience arising later. But, if at the time of taking input tax credit itself there was no such 'intention', then taking credit is more inculpatory than the change (of intention) arising later. In either case, after taking credit, if the goods or services are:

(a) NOT USED for business purposes, then section 17(1) comes into operation demanding reversal of credit on both, goods and services. As to whether the goods or services were actually used for business purposes or not may be ascertained from - (i) nature of the goods or services itself or (ii) working backwards from non-business 'output' activities of the registered person and then identifying 'input' goods or services that would have been used or involved in such non-business activities. Where any goods or services are used in such non-business activities, then the whole of the credit is straight away liable to be reversed;

(b) USED for making outward supplies that are NOT TAXED, then section 17(2) comes into operation seeking reversal of credit on both, goods and services based on a formula prescribed in rule 42 (for inputs and input services) and rule 43 (for capital goods). Exempt supply is defined in section 2(47) but for the limited purposes of section 17(2), section 17(3) provides a special definition of 'exempt supply'. Please consider the table below for the description of 'specially exempt supply' and its key differences with the general definition of 'exempt supply', namely:

Description and sub-description of outward supplies				Specially 'exempt supply'	Normal 'exempt supply'
Leviable to GST	Tax applicable	Zero-rated		×	×
		Domestic	Rate with credit	×	×

			Rate without credit*	✓	✗
	Tax exempted	Zero-rated		✗	✗
		Domestic**	Interest on loans given	✗	✗
			Sale of Duty Credit scrips	✗	✗
			Goods transport by vessel from Indian port (outbound)	✗	✗
			All others	✓	✓
Non-leviable to GST	Zero-rated			✗	✓
	Domestic			✓	✓
No supply (Sch III)	Sale of land or sale of (completed) building (para 5)			✓	✗
	Supply of warehoused goods to any person before clearance for home consumption			✓	✗
	Supply of all other (listed in Sch III)			✗	✗
Securities (neither 'goods' nor 'services')				✓	✗
Supplies liable to payment of output tax on RCM basis				✓	✗
Central excise duty paid under entry 84 and 92-A				✗	✓
State excise duty paid under entry 54				✗	✓
VAT paid under entry 51				✗	✓
CGST, SGST, IGST and Cess paid				✗	✗

** Notification No.11/2017-CT(R), dt. 28.06.2017 specifies at para 4(iv)(b) that where rate of GST is prescribed (and not '0%' or 'nil') for services with a condition that input tax credit will NOT be allowed. Then such supplies are to be considered as 'exempt supply' for purposes of section 17(2) and where they are (a) wholly used for such supplies taxable at a 'rate without credit', then entire credit will not be allowed and (b) partly used for such supplies taxable as a 'rate without credit', then such credit to be treated under section 17(2).*

*** Export of services to Nepal and Bhutan against payment in Indian Rupees was excluded from credit reversal but after amendment of the definition of export of services to conditionally relax repatriation in INR the same has been deleted from this special relaxation as no longer required since the relief is available in the law itself.*

Above table gives a good view of the '*special exempt supplies'* that is prescribed for purposes of credit reversal. Now, let us examine the nature of reversal of credit that is prescribed.

a) Credit review for reversal is required to be carried out monthly (provisional) and annually (final) for inputs and input services and only monthly (final) for capital goods;

b) Total credit 'taken' in a month comes in for this review and not total credit 'eligible'. So, it seems like one can defer claiming credit where extent of reversal required (by this rule 42) is higher in one month than in another month. But, please note that credit in respect of inputs and input services is required to be revised annually. So, it may not be possible after all to adjust the credit-data to optimize on reversals;

c) Credit related to Schedule III supplies must always be allowed and cannot come in for any reversal for the reasons that (a) items listed in Schedule III are 'no supply' and (b) explanation inserted in section 17(3) expressly states the exception from para 5 of Schedule III. Although this explanation was inserted from 1st February 2019, as per decision in *Sundaram Pillai v. Pattabiraman [1985 AIR 582 SC]*, where the date of coming into effect of 'explanation' and 'proviso' inserted in a legislation must be examined from the context and Hon'ble Supreme Court takes pains to laid down various circumstances and applicability of these expressions in each case. Further exception has been made to clause (a) of para 8 of schedule III;

d) Purpose of this exercise is to identify 'common credits' that are used for (a) taxable and credit admissible outward supplies and (b) taxable but credit not admissible and exempt outward supplies and those liable to reverse charge. Merely because inward supplies 'appear' to be common does not mean they must be common, and their credits be subject to treatment under this rule. Experts are of the view that the requirement in this rule is to exclude credits that are directly related to various end-uses (discussed in detail later) and then 'derive' the pool of common credits. If registered persons are able to segregate apparently common inward supplies at invoice-level (and even on analytical basis, which may be subject to challenge), then there may be (almost) 'nil' common credits. And this is permitted in this rule by way of *third proviso* to rule 42(1);

e) Compliance with rule 42 is different for works contract service involving construction of apartment whether of 'ongoing' real estate project or as 'new' real estate which are taxed without input tax credit ('RE Supplies'). So, the treatment under this rule may be examined in the light of the supplies involved and data qualities from the records of the registered person are extremely important to be sanitized and segregated.

f) Even though, the following supplies are treated as exempted, ITC reversal would not be involved in respect of such supplies. The following are the list of such supplies:

   i) Interest or discount earned on extending loans or advances

   ii) transportation of goods by a vessel from the customs station of clearance in India to a place outside India

   iii) sale of duty credit scrips

   Though these are prospective amendments, one can also take an interpretation that these are in the nature of clarificatory and would in effect from the insertion of the provision. However, this would be subject to testing in the court of law in the future.

Non-RE Supplies

Instead of detailed discussion running into several pages, the table below attempts to explain the operation of this rule for non-RE supplies:

<table>
<tr><th rowspan="2">Outward supplies:</th><th colspan="3">Credit on inward supplies (T)</th></tr>
<tr><th>Wholly</th><th colspan="2">Partly (C1) = ($T-T_1-T_2-T_3$)</th><th>Ineligible (T_3)</th></tr>
<tr><td>Non-business</td><td>× (T_1)</td><td rowspan="4">(C_2)
(C_1-T_4)</td><td>×(D_2)
(5%xC_2)</td><td>×</td></tr>
<tr><td>Specially 'exempt supply' (Note 1)</td><td>× (T_2)</td><td>×(D_1)
(C_2X E/F)</td><td>×</td></tr>
<tr><td>Zero-rated</td><td rowspan="2">✓ (T_4)</td><td rowspan="2">✓ (C_3)
($C_2-(D_1+D_2)$</td><td>×</td></tr>
<tr><td>Domestic (other than above) (Note 2)</td><td>×</td></tr>
</table>

Note 1:

Specially 'exempt supply':		
	Domestic (other than zero-rated):	
		*Taxable but exempt u/s 11**
		Taxable without credit
		Non-taxable sale of land and sale of (completed) building
		Transaction in securities
		Supplies liable to RCM

Note 2:

Domestic (other than all of above):	
	Taxable with credit
	No supply (other than para 5 of Schedule III & clause(a) of para 8 of schedule III)
	Interest on loans given
	Transport by vessel from Indian port (outbound)

From the above, it is clear that:

- Credit will first need to be identified where it is 'wholly' not allowed (T_1, T_2 and T_3);
- Remainder is credit 'wholly' allowable PLUS 'common credits' (C_1);
- Out of this, credit 'wholly' allowable is identified and allowed (T_4);
- From the revised remainder i.e., common credit (C_2) is re-allocated to:
    - Specially 'exempt supply' (D_1) which is a pro-rata of the revised remainder of credit in the ratio of specially '*exempt supply'* by '*total turnover in the State'*;
    - Non-business end-use (D_2), which is a allocation of 5% of C_2;
    - Adjusted remainder will be 'allowable' (C_3).

The above computation is required to be carried out monthly and then again at the end of the financial year (not later than Sept following end of year). No variation is expected in T_1, T_2 and T_3 in this year-end review. Variation in D_1 and D_2 are relevant and upward or downward revision is permitted. In case of upward revision (aggregate of monthly calculation is less than

amount arrived by annual calculation), the additional amount that ought to be reversed along with interest under section 50(1) from April to September (or earlier when reversals are finally revised) after end of financial year to which such credit relates. In case of downward revision (aggregate of monthly calculation is greater than amount arrived by annual calculation), the excess reversal may be reclaimed as credit in any month (when reversals are finally revised) but not later than returns for the month of September following end of financial year to which such credit relates.

RE Supplies/ Supplies / Inward supplies for promotion of Real Estate Project.

Very simply put, review of common credits in case of RE Supplies is not exactly as discussed above in the context of non-RE Supplies for the reason of 'timing difference' between year in which inward supplies are received and year in which related outward supplies (of apartments) are made. Having understood the computation of reversal under rule 42, following points may be noted:

a) RE Supplies does not cover all works contracts but only construction of apartments as the reference is to para 5(b) of Schedule II (i.e. Construction Contract) and not para 6(a) of Schedule II (i.e. Works Contract);

b) Residential Real Estate Project are subject to tax at a rate of CGST 2.5% plus SGST/UTGST 2.5% (total 5%) or IGST 5% (without ITC) hence it will be treated as exempt supplies due to the operation of explanation 4(iv)(b) to *Notification No.11/2017-CT(R), dated 28.06.2017*.

On the other hand Real Estate Project REP project, commerical apartments do not enjoy the new rate regime and would be treated as taxable supplies;

c) Computation of credit allowable and credit to be reversed are to be determined for each project in the month of completion when certificate completion is granted. Hence, until that month, all credits may be taken so as not to miss the time limit under section 16(4) and left unitilized.

PARTICULARS	ATTRIBUTES
The total value of tax attributed to inward supplies in a tax period.	T
Inward supplies intended to be used exclusively for the purposes other than business.	T_1
Inward supplies intended to be used exclusively or effecting exempt supplies	T_2
Inward supplies not available under sub-section (5) of section 17	T_3
Inward supplies intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies.	$T_4 = 0$

ITC credited to the electronic credit ledger of registered person.	$C_1 = T - (T_1 - T_2 - T_3)$
Common ITC.	$C_2 = C_1 - T_4$
	(or)
	$C_2 = C_1$
Aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier.	E
Aggregate carpet area of the apartments in the project.	F
Reversal of Common ITC towards exempt supplies.	$D_1 = (E/F) \times C_2$
Reversal of Common ITC attributable to non-business purposes.	$D_2 = C_2$ X 5%
Eligible common ITC attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies.	$C_3 = C_2 - (D_1 + D_2)$

Please note reversal of credit under rule 37 attracts interest but not monthly reversal under rule 42. However, please also note that credits such as T_1, T_2 and T_3 should not be availed. Interest liabiltiy for claim of credit (between commencemnet and completion of cosntruction) is alllowed only in respect of D_1 and D_2. In case credits in the nature of T_1, T_2 and T_3 are availed albeit innocently, this relief from interest will not be available;

d) RE Supplies exempt from tax will comprise of:

Description	Ongoing Project	New Project
Exempt supplies	Apartments sold after date of OC/CC and hence not taxed	All apartments in new projects that are 'taxable without credit'
Taxable supplies	Apartments that are 'taxable with credit' and sold before OC/CC	None, whether sold before or after OC/CC
		Commercial apartments in REP

e) Rule 42(3) prescribes review of credit reversals is required to be carried out project-wise on date of grant of certificate of completion (not later than Sept following). It is accepted in the rule that projects may take more than one finacial year and hence, project duration is considered relevant for this 'project end review' of credit reversal by ignoring any intervening financial year end until completion of said project;

f) Rule 42(4) applies to 'transition project', that is project that was commenced before 1 Apr 2019 which was 'taxable with credit' and option was exercised for the project to be 'taxable without credit'. In such projects, the requirement is to proceed project-wise and

with retrospective effect from (i) date of project commencement or (ii) 1st Jul 2017, whichever is earlier ("Special Review Period). This adjustment is required only in respect of 'comemrcial units' in a REP project for certain reasons, namely: (A) at the time of transition into 'new rate regime', all credits taken would have been revsered in terms of *Notification No. 3/2019-CT(R), dt.29.03.2019* which made specific amendments to *Notification No. 11/2017-CT(R), dt.28.06.2017* and (B) new rate regime applies only to residential apartments as per entry 3(id) and commercial apartments in REP are 'taxable with credit' as they do not come under the new rate regime. Hence, in respect of commercial apartments in REP will be eligible for credit;

g) Review of credit reversal for RE Supplies to be carried out only in repect of RREP proejcts with commerical apartments, after the new introduction of new rates, and not otherwise. The procedure for the reversal of ITC as per rule 42 (4) is as follows:

PARTICULARS	**ATTRIBUTES**
The eligible common input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies. - **from 01.07.2017 to 31.03.2019**	C3r
Total carpet area of the commercial apartments in the project	AC / F
Total carpet area of all apartments in the project	AT
The eligible common input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies. - **from 01.04.2019**	C3i
The aggregate amount of common credit on commercial portion in the project - **for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier**	C3A = [C3r X (AC / AT)] + C3i
Total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.	E
The amount of final eligible common credit on commercial portion in the project	C3F = C3A X (E/F)

- Credits not allowable would have already been reversed towards T_1, T_2 and T_3;
- Special reversals of D1 and D2 would also have been identified and reversed;
- RE Supplies would NOT have been considered as 'exempt supplies'. So, credit related to RE Supplies which are 'exempt' would be carried in T_4 and in C_3;
- Take out from T_4 (if not already done), credits relatable to apartments 'taxable without credit' on a project-wise basis and reverse the same on date of completion but within September following the end of the financial year of the project completion;

- C3i will be computed monthly upto date of completion as per the formula prescribed in Rule 42 (1)
- Now, actual amount of C3F 'eligible' will be determined to when C3A is to be reduced in the ratio of 'unbooked commerical apartments' by 'total commerical apartments' (of carpet area).;
- Variation in C3A and C3F may either be downward or upward. In case of downward revision , then additional amount that ought to be reversed along with interest from April to September (or earlier when reversals are finally revised) after end of financial year. In case of upward revision , the excess reversal may be reclaimed as credit in any month (when reversals are finally revised) but not later than returns for the month of Sept following end of year.

In case of RE Supplies and Non-RE Supplies, following values will NOT be included both as exempt supplies and total turnover:

(i) Value of Central excise duty paid under entry 84 and 92-A;

(ii) Value of State excise duty paid under entry 54;

(iii) Value of VAT paid under entry 51 of the VII Schedule to Article 246 of COI; and

(iv) Value of GST – CGST, SGST, ISGT and Cess – paid.

Illustration (Rule 42): Manner of determination of ITC in respect of inputs or input services and reversal thereof

Sl. No	Particulars	Reference	CGST	SGST/ UTGST	IGST
1	Total input tax on inputs and input services for the tax period May 2021	T	1,00,000	1,00,000	50,000
	Out of the total input tax (T):				
2	Input tax used exclusively for non-business purposes (Note 1)	T_1	10,000	10,000	5,000
3	Input tax used exclusively for effecting exempt supplies (Note 1)	T_2	10,000	10,000	5,000
4	Input tax ineligible under Section 17(5) (Note 1)	T_3	5,000	5,000	2,500
	Total		**25,000**	**25,000**	**12,500**
	ITC credited to Electronic Credit Ledger (Note 1)	$C_1 = T - (T_1 + T_2 + T_3)$	**75,000**	**75,000**	**37,500**

	Input tax credit used exclusively for taxable supplies (including zero-rated supplies)	T_4	50,000	50,000	25,000
	Common credit	**$C_2 = C_1 - T_4$**	**25,000**	**25,000**	**12,500**
	Aggregate value of exempt supplies for the tax period May 2021 (Note 2 and 3)	E	25,00,000	25,00,000	25,00,000
	Total Turnover of the registered person for the tax period May 2021 (Note 2)	F	1,00,00,000	1,00,00,000	1,00,00,000
	Credit attributable to exempt supplies	$D_1 = (E/F) * C_2$	6,250	6,250	3,125
	Credit attributable to non-business purposes (if inputs & input services are used partially for business and non-business purposes)	$D_2 = C_2 * 5\%$	1,250	1,250	625
	Net eligible common credit	$C_3 = C_2 - (D_1 + D_2)$	17,500	17,500	8,750
	Total credit eligible (Exclusive + Common)	**$G = T_4 + C_3$**	**67,500**	**67,500**	**33,750**

Note 1: If the registered person does not have any turnover for May 2021, then the value of Exempt Supplies (E) and Total Turnover (F) shall be considered for the last tax period for which such details are available

Note 2: Aggregate value excludes taxes

Note 3: The registered person is expected to make such computation for each tax period and reverse the same in the periodic returns being filed by such registered person. However, on completion of the financial year, input tax credit shall be determined accurately based on actuals, in the same manner as provided in Rule 42. A true up is required to be done on an annual basis (between the amounts reversed for each tax period during the year and the amount determined at the end of the financial year) and any excess credit availed needs to be reversed with interest while short credit, if any, needs to be re-availed within 6 months from end of the financial year.

It is to be noted that the registered person would be required to remit excess ITC claimed (as determined in Note 3 above) with interest calculated for the period starting from the first day of

April of the succeeding financial year till the date of payment. However, no interest can be claimed if, at the end of the financial year, it is found that short credit was availed.

(g) Reversal of credit based on 'condition of end-use' – capital goods

Input tax credit in respect of capital goods is also fettered with the same conditions (refer discussion on 'vesting conditions' for input tax credit under section 16(1) (above) which comprises of precedent conditions or subsequent conditions). Registered person continue to be responsible for meeting all requirements to correctly claim input tax credit even on capital goods as per section 155. Now, unlike inputs and input services, end-use of capital goods is more objective because output for each month can be determined.

When capital goods are NOT USED in making taxable outward supplies, then they too come in for review of credit. Capital goods 'used' do not get 'used up'. Hence, the computations applicable to input and input services cannot be applied to capital goods.

<table>
<tr><th>Description of outward supplies</th><th>Credit on capital goods</th><th>End-use 'swap'</th></tr>
<tr><td>Non-business</td><td rowspan="2">Not credited to ECL; 'ineligible' capital goods</td><td rowspan="4">Credit on 'all' capital goods deemed to accrue on '5% per quarter' (or part). Swap of end use from ineligible to eligible and vice versa will be available to the extent accrued as per rate above.</td></tr>
<tr><td>Specially 'exempt supplies'*</td></tr>
<tr><td>Taxable</td><td rowspan="2">Credited to ECL; 'eligible' capital goods</td></tr>
<tr><td>Zero-rated</td></tr>
<tr><td>End-use not identified exclusive to either of above</td><td>Credited to ECL (A) and subject to adjustment under rule 43; 'common' capital goods</td></tr>
</table>

** interpretation of specially 'exempt supplies' is same for rule 42 and rule 43.*

Treatment given to RE Supplies and Non-RE Supplies is applicable even to capital goods.

Non-RE Supplies

In case of non-RE Supplies, full credit of 'eligible' and 'common' capital goods will be taken in the month in which they are received by the registered person.

(a) Credit related to capital goods exclusively used to make taxable outward supplies including zero-rated is 'wholly' available;

(b) Credit related to capital goods exclusively used to make non-business and special 'exempt supplies' are 'wholly' NOT available;

(c) Credit related to capital goods that are not identified exclusively to either of the above will be taken as credit subject to treatment under this rule (TC);

(d) Credit subject to treatment will be divided by 60 for each month (TM) of the deemed

useful file of 5 years being 60 months (rule 43(1)(c) is prescribed useful life for all capital goods);

(e) Each such capital goods will have its own TM for a given month. Now monthly TM of all such capital goods must be aggregated (TR);

(f) Credit liable to reversal is computed on the ratio of 'specially exempt supplies' by 'total turnover in the State' for the registered person (TE); and

(g) Amount so arrived will need to be reversed. Interest will be applicable because total capital goods credit (A) would have been taken in the month of receipt of capital goods (and credited to ECL) and now a 'new TE' would be computed each month based on the ratio.

RE Supplies

In case of RE Supplies, capital goods used for non-RE Supplies are excluded from this discussion and previous section may be referred for the applicable treatment. Capital goods used for RE Supplies full credit of 'eligible' and 'common' capital goods will be taken in the month in which they are received by the registered person.

Description of outward supplies	End-use of capital goods		Credit subject to treatment under rule 43
	Exclusively	Commonly	
Apartment 'taxable without credit'	✓	✓	×
Other exempt construction	✓	✓	×
Ongoing project (opted for old rate)	✓	✓	✓
Commercial apartment in REP	N.A.	✓	✓

(a) Credit reversal treatment in respect of capital goods is required to be made project-wise and on the date of grant of certificate of completion;

(b) During construction period, capital goods used for taxable supplies is required to be assumed as 'nil';

(c) Value of apartment to be considered is their total value and not the value billed or paid upto date of completion;

(d) Credit on 'common' capital goods like to be reversed (TE) in case of RE Supplies is to be determined based on following steps:

- Identify credit relating to 'common' capital goods from 01.07.2017 to date of completion of project;
- Carry out all steps to arrive at TE, that is:
  - Take credit individually for each 'common' capital goods NOT monthly but for entire project duration (TC);

- Aggregate of all invidivual TC will be TC-FINAL;
- Arrive at factor to reduce total credit to arrive at eligible and ineligible;

Total carpet area of apartments constructed (project-wise) (F)			
Exempt	Taxable without credit	Partly taxable and exempt	Taxable with credit
E1 (Area only)		E2 (Area x Value Exempt / Total Value) *	E3 (Area unsold or unbooked only) **

** E2 generally expected to be 'nil' for the reason that in case of apartments under new rate regime credit is not allowed at all. In respect of ongoing projects where old rate regime continues, then full credit is available. Where 'common' capital goods are used for more than one such projects, then 'reasonable basis' (and NOT this rule) is applicable as per rule 43(4).*

*** E3 will be limited to 'unsold' or 'unbooked' apartments as GST (ongoing project under old rate regime) will apply even if payments are not fully received within date of OC/CC but have been 'sold' or 'booked' before that date.*

- Ineligible credit will be the net amount new-TE arrived by applying the above factor to the credit on 'common' capital goods TC; and
- Applying this formula to all 'common' capital goods will provide TE-FINAL;

- Variation in TE with new-TE-FINAL may either be downward or upward. In case of downward revision (FINAL is higher), then additional amount that ought to be reversed along with interest from Apr to Sept (or earlier when reversals are finally revised) after end of financial year. In case of upward revision (FINAL is lower), the excess reversal may be reclaimed as credit in any month (when reversals are finally revised) but not later than returns for the month of Sept following end of year.

(e) All computation of eligible ineligible is required to be considered on 1/60 basis to begin with although credit may have been entirely availed (where available only) at the time of their receipt by the registered person.

Illustration (Rule 43): Manner of determination of ITC in respect of capital goods and reversal thereof in certain cases

Sl. No	Particulars	Reference	IGST
1	ITC on capital goods used exclusively for non-business purposes (Note 1)	T_1	10,000
2	ITC on capital goods used exclusively for effecting exempt supplies (Note 1)	T_2	10,000
	Total		**20,000**

3	ITC on capital goods used exclusively for taxable supplies (including zero-rated supplies) (Note 1)	T_3	50,000
4	ITC on capital goods (other than T_1, T_2 and T_3) (Annexure A)	A= B	1,50,000
5	ITC on capital goods whose residual life remain in beginning of tax period (Annexure A)	T_r	2,500
7	Aggregate value of exempt supplies for the tax period May 2020 (Note 2 and 3)	E	25,00,000
8	Total Turnover of the registered person for the tax period May 2020 (Note 2)	F	1,00,00,000
10	Credit attributable to exempt supplies	T_e = (E/F) * T_r	625

Note 1: T_1, T_2 and T_3 should be declared at summary level in **Form GSTR-3B**. T_3 (being ITC on capital goods used for taxable supplies) and A (being common credit in respect of capital goods) shall only be credited to the electronic credit ledger

Note 2: If the registered person does not have any turnover for May 2020, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value excludes taxes

Annexure A - ITC on capital goods whose residual life is remaining

Sl. No	Particulars	Reference	Amount
	For May 2020		
1	Inward supply value of Machinery X	A	12,50,000
	IGST @ 12%	B	1,50,000
	Invoice Value		**14,00,000**
	Date of inward supply		**12 May 2020**
	Life of the capital goods (in months) - for GST purpose is 5 years	C	**60**
	ITC attributable for 1 month	Tm_1 =B/C	**2500**

With the omission of rule 43(1)(f), corresponding renaming of T_r as "sum total of T_m" appears to have been overlooked but to read the provisions of rule 43(1)(g) harmoniously as applicable qua each item of capital goods.

Note:

It is important to note that unlike Rule 42 which mandates determination of the actual amount of reversal on the completion of the financial year, Rule 43 does not prescribe any re-

computation at the end of the financial year. This could be presumed to be due to the fact that reversal of input tax credits under Rule 43 is based on number of tax periods unlike that of Rule 42. But considering the fact that reversal of common credits under Rule 43 is also based on the proportion of turnover of exempt supplies to the total turnover in the State for that tax period, due consideration should be given to the fact that any shortage of ITC on account of any reason cannot be subsequently availed under Rule 43. On the other hand, any excess credit availed would promptly be subject to scrutiny by the proper officer.

Restrictions on ITC: Banks and NBFCs under section 17(4) read with Rule 38 of the CGST Rules

Banking Company or financial institution including NBFC engaged in accepting deposits, extending loans or advances: An option is made available to a Banking company or financial institution including NBFC engaged in accepting deposits, extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17. As per this option, the ITC availment would be limited to 50% of the eligible ITC on inputs, capital goods and input services each month and lapse the remaining ITC. In this case, banking company or financial institution shall:

(i) Be refrained from availing input tax credit relatable to 'non-business purposes' and those restricted under section 17(5).

(ii) Avail full credit on inter-branch supplies between distinct persons of the banking company or NBFC. In other words, if HO has restricted credit to 50% and those goods or services are involved in inter-branch taxable supplies, the receiving branch is NOT required to further apply the 50% restriction.

Further, even if the HO avail some services from branch, HO can avail 100% credit. This relief is provided in *second proviso* to section 17(4).

(iii) Not be able to change the option once exercised during the remaining part of the financial year.

Interest income is the main source of revenue of banks and NBFCs and the same is exempt under GST *vide* entry 27(a) of *NN 12/2017-CT(R)* and entry 28(a) of *NN 9/2017-IT(R)*. The relevant extract of the said entry is as under:

Sl No.	***Chapter, Section, Heading, Group or Service Code (Tariff)***	***Description of services***	***Rate (%)***	***Condition***
27	*Heading 9971*	*(a) Services by way of—(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount* ***(other than interest involved in credit card services);***	*NIL*	*NIL*

Where this option to restrict input tax credit under section 17(4) is not availed. Then input tax credit after complying with rule 42 and 43 will be the extent admissible.

Restrictions on ITC: Blocked credits under Section 17(5)

This section commences with a non-obstante clause "*notwithstanding anything contained in sub section (1) of section 16 and sub section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -*". It clearly means that the provision of section 17(5) overrides sections 16(1) and 18(1). Further, section 17(5) uses the expression '*in respect of*' which connotes a broader meaning.

(a) Motor Vehicles

After such amendment, clause (a) of section 17(5) regarding eligibility/ non-eligibility of input tax credit on vehicles has become more specific. As per amended provisions, firstly, input tax credit on motor vehicles for transportation of goods is not barred, that is, credit is fully admissible subject to any specific restrictions in tariff *Notification No. 11/2017-CT(R), dated 28.06.2017*. Secondly, motor vehicles used for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) are ineligible for input tax credit except if used for following specified purpose:

(a) Further supply of such vehicle or vessel or aircraft; or

(b) Transportation of passengers; or

(c) Imparting training on driving such vehicles.

As per the amended provisions, ITC on motor vehicles with approved capacity of more than 13 persons (including the driver) will be available, subject to tariff restrictions, if any.

Motor Vehicles Act, 1988 defines 'motor vehicle'* in section 2(28) as follows:

Any mechanically propelled vehicle	Adapted for use upon roads	Power of propulsion from external or internal source
Inclusions	**Exclusions**	
Chassis to which body is NOT attached	Vehicle run on fixed rails	
Trailer	Vehicle of special type adapted for use only in factory or in enclosed spaces	
	Vehicle having less than 4 wheels with engines capacity less than 25 cc	

** vehicle is used interchangeably with motor vehicle.*

From the above definition, it is abundantly clear that railway wagons, coal wagons, etc. not being a motor vehicle are eligible for credit. Similarly, two-wheelers and three-wheelers with

engine capacity less than 25 cc are also not a motor vehicle and thus, will be eligible for credit. Also, it needs to be noted that credit will be available on motor vehicles used for passenger transportation with seating capacity of less than 13 persons if they are used for making specified taxable supplies viz., further supply of such vehicles, transportation of passengers or imparting training on driving. For example, a car registered as commercial vehicle and being used in transportation of passengers (ola/uber cab) will be eligible for credit.

As stated earlier, this entire restriction applies only in respect of 'passenger transport vehicles' and not for 'goods transport vehicles'. Examine whether construction equipment mounted on crawlers or wheels or rollers even though affixed with a 'mark of registration' would be goods transport vehicles or construction machinery. From the above definition, the point of emphasis is 'adapted for use upon road' & not the fact of 'registration mark'. Test of 'adapted for use upon road' refers to the 'principal function' is its use for transportation by road. Added functionalities or features may ease operations before or after transportation. By its very nature, such construction machineries are 'not adapted' for use on road but for use off-road. Wheels (or crawlers or rollers) fitted are to provide added mobility within the site & for its own transport to other sites, but not for transporting other articles but to work on its own. And then there are tippers and dumpers which are 'adapted' for use on road as earth movers not for excavation but for transporting material after earth excavation along with added features of easy loading or unloading with pneumatic cylinders, etc. Forklifts & other vehicles that have very limited range of mobility but high capacity for lifting or moving loads are also 'not adapted' for use upon road. Care must be taken to classify these vehicles based on the definition referred from Motor Vehicle Act.

Description	Mark of Registration?	Motor Vehicle or Not?	Creditable or Not?
Buses for transport of more than 13 persons	Yes	Yes	Yes
Trucks for transport of goods	Yes	Yes	Yes
Cars for transport of less than 13 employees of the company	Yes	Yes	No
Truck chassis	Yes	Yes	Yes
Truck chassis + goods transport body	Yes	Yes	Yes
Truck chassis + passenger transport body	Yes	Yes	No
Truck chassis + ambulance body	Yes	Yes	No
Tractor (designed to pull or push a payload – farm or road use)	Yes	Yes	Yes

Tractor + Trailer	Yes	Yes	Yes
Trailer only	Yes	Yes	Yes
Tipper	Yes	Yes	Yes
Road-roller	Yes	Yes	Yes
Wheel-loader or pay-loader	Yes	No	Yes
Excavator	No	No	Yes
Fork-lift	No	Yes	Yes
Aircraft tug	No	Yes	Yes
Motor car (electrically operated)	Yes	Yes	No
Two-wheelers (more than 25 cc)	Yes	Yes	No
Two-wheelers (less than 25 cc)	Yes	Yes	Yes
Two-wheeler (electrically operated)	Yes	Yes	No

Another aspect to consider is whether credit is admissible in respect of 'test drive' vehicles that are neither 'held for sale' nor 'put to regular use'. As test for ineligible credit is 'further supply', based on broader meaning of the expression 'in respect of', used in sub-section (5), credit WILL BE allowed. Reference may be had to *AM Motors [(2018) 18 GSTL 93 (AAR, Kerala)]* and *Chowgule Industries (P.) Ltd. 2019 (27) G.S.T.L. 272 (A.A.R. -GST)*. However this case is dissented in *Khatwani Sales & Services LLP vs. 2021 (47) G.S.T.L. 525(A.A.R.-GST-M.P.) As per the Judgement, vehicles used for providing trial run to customers and essential part of marketing and sales promotion although capitalized in books of account, being sold on written down value after limited use period, are to be treated as a sale of used/second-hand vehicle and not as a sale of a new vehicle. Therefore, demo vehicles are not covered in the exception clause (a), clause (b) or clause (c) of section 17(5)(a) of the CGST Act, 2017. Applicant is not eligible for input tax credit on demo vehicles in spite of the fact that such vehicles used by applicant for furtherance of their business*. It may be noted that when the 'test drive' vehicles are sold after being used, the same are allowed to be valued as per margin method in terms of *Notification No. 8/2018-CT(R), dated 25.01.2018* only if input tax credit thereon has not been taken.

(aa) Vessels and Aircraft:

After notification of clause (b) of Section 9 of the CGST Amendment Act, 2018 from 1st February 2019 *vide Notification No. 2/2019-CT, dated 29.01.2019*, it has replaced clause (aa) of Section 17(5) regarding eligibility/ non-eligibility of input tax credit on 'vessels and aircraft' is more specific. As per amended provisions, all vessels and aircraft are rendered ineligible for credit except if used for following specified purpose:

(i) For making taxable supplies or:
   (a) Such vessel or aircraft themselves; or
   (b) Transportation of passengers; or
   (c) Imparting training on navigating such vessels; or
   (d) Imparting training on flying such aircraft; or

(ii) For transportation of goods.

From the foregoing it is clear that vessels and aircraft have a similar embargo like motor vehicles although worded slightly differently. That is, transport of goods is totally eligible for credit in case of motor vehicles as well as vessels and aircraft. Care must be taken to note that this exception (ineligible credit is made eligible in certain exceptions listed) must be strictly adhered to. Further, tariff conditions [conditions linked to rate of GST under *Notification No. 11/2017-CT(R), dated 28.06.2017]* being more specific, will render credit that is covered by this exception to again become ineligible.

Although notification cannot overrule the statute, please note that section 17(5) is an embargo that is applicable to all registered persons. So also, the relaxation of this embargo applies to all registered persons. Now, a taxable person in search of the GST tariff applicable finds that *Notification No. 11/2017-CT(R), dt. 28.06.2017* prescribes rate of GST with a condition that input tax credit on goods (includes capital goods) is NOT to be availed. Explanation to section 11 states that where an exemption (partly or full) is granted absolutely (applicable to all) cannot be deviated from and must be mandatorily availed. In other words, 'conditional rate' cannot be converted into 'optional rate' by deliberately violating the 'condition' attached to the prescribed rate of tax. One must pay the specially prescribed rate of GST and also adhere to the condition (and refrain from claiming credit). Refraining from claiming credit obviously refers to credit that is otherwise eligible. Tariff notification is not attempting to override the statute here but is in complete harmony where it firstly recognizes that credit (in respect of motor vehicles, vessels and aircraft) to the extent (that it comes within the exceptions carved out) becomes eligible under section 16(1) read with section 17(5) and secondly, it is this (extent of eligible) credit that is to be refrained from availing in order to properly comply with the conditions prescribed in the tariff notification. Hence, there is no disharmony between the conditions prescribed in the tariff notification and the provisions of section 17(5).

Another important aspect to highlight is that 'further supply' of vessel or aircraft (also applicable to motor vehicle) does not mean only 'resale' but any 'form' of supply. In other words, 'purchase' of vessel or aircraft (even motor vehicle) when used to let-out on 'lease', will qualify for credit admissibility because the output is 'further supply' although not of the same form. Further supply which can be in 'any' form must not be of such a form where tariff notification places an embargo on claiming credit. 'Hire' is a fare for passage and 'lease' is right to use. When we buy a flight ticket, we only pay for the trip (or passage along the route) but we do not pay for 'right to use' the aircraft (or vessel or motor vehicle) even when it is a

charter. Care must be taken not to interchange these expressions and seek to come under a tariff entry that is free from credit restriction-conditions.

(ab) Services of upkeep of motor vehicles, vessels and aircraft:

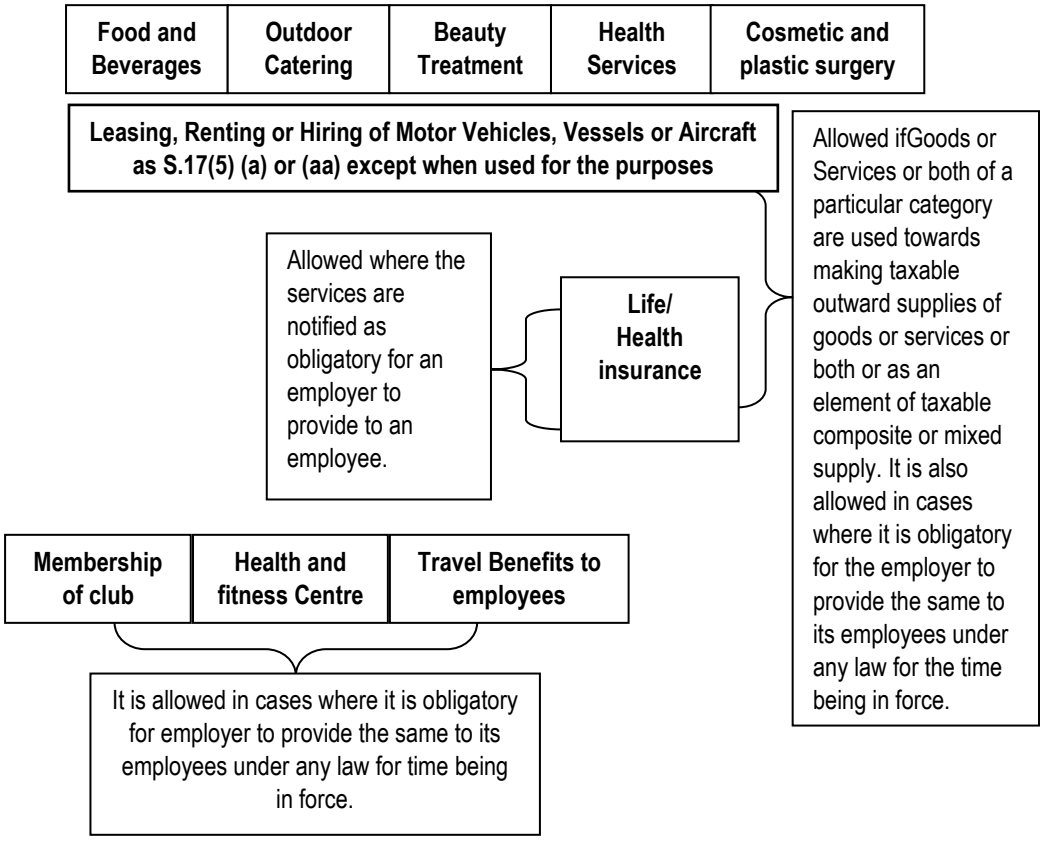
Further, credit of general insurance, servicing, repair and maintenance shall be available so far as it relates to motor vehicle, vessels or aircraft on which credit is available. Furthermore, credit will also be available if the services are received by a taxable person engaged in manufacture of the motor vehicles or in supply of general insurance services in respect of motor vehicles, vessels or aircraft insured by him.

Interestingly, it has been observed that this restriction is being imposed even on authorized service centres (ASC) involved in providing maintenance as their principal supply to customers (owners of motor vehicles). Maintenance charges are an expression that is applicable *qua* owner of motor vehicle. Maintenance charges *qua* authorised service centre are in the nature of sub-contract charges where ASC is the main-contractor of the customer (owner of motor vehicle). ASC will not 'maintain' vehicle belonging to the customer.

Now, maintenance and upkeep charges will be creditable if the underlying motor vehicle (or vessel or aircraft) is also eligible for credit. Please note that the tariff notification restriction on credit will not be limited to motor vehicle (or vessel or aircraft) but will extend to its maintenance and upkeep also.

(b) Supply of goods /and services being:

In the certain specified cases, credit is blocked unless they are used in making a further outward supply as such or as an element of a composite or mixed supply.



As per amended section 17(5), input tax credit of all above services shall be eligible if it is obligatory on the part of employer to provide the same to its employees under any law for the time being in force. For E.g., Credit of GST paid on outdoor catering services used in factory may be allowed after effective date, as Factories Act made it compulsory to provide canteen services if factory has certain no. of employees. Earlier, this credit was not allowed.

Although credit is restricted on the above supplies, credit would still be allowed if they are used for effecting further taxable supply of the same category, or as an element of a taxable composite or mixed supply. Often in a business scenario, it is extremely difficult to link such inward supplies to taxable outward supplies. For instance – in a rent-a-cab service – input tax credit would be allowed if the corresponding inward supply could be linked to an outward supply of the very same rent-a-cab service; but if rent-a-cab outward supply is provided free of cost then the question that arises is – whether input tax needs restriction or output supply is subject to valuation? Assume that in the very same example the rent-a-cab outward supply is provided by a hotel to its guest – in the form of free airport transfers– what would be the position of input taxes? The pertinent question would be whether it was for furtherance of business for which the obvious answer would be in affirmative as the cost would have been included in the value of the other (composite or mixed) supply of services. Alternative views

may arise due to the facility not being uniformly available to all guests. But care must be taken to reflect on the admissibility of credit when output is subjected to tax.

It would not suffice to merely claim that these restricted supplies are used for further taxable supply in the absence of a clear link between the restricted inward supply and the taxable outward supply. Mere utilization of these restricted supplies for the benefit of the supplier in the course of an outward supply may validate input tax credit on such restricted supplies.

Certain instances where the credits on aforementioned restricted categories can be attempted to be availed are indicated below:

Inward Supplies	Credit Eligibility
Food and Beverages or Outdoor Catering	Corporate party organized by hiring an Event Manager. Event Manager is contracted to ensure all arrangements relating to food, guests, lighting, decoration, cab services for pick up and drop etc. Event Manager uses the services of a caterer to serve food at the party and engages a rent-a-cab operator to pick-up and drop guests. (i) Credit to Event Manager for food and Rent-a-Cab services – Available since inward supplies have been used for making outward supplies (ii) Credit to Company – Available since they are availing composite supply of event management and not a standalone supply of various elements contained in organizing such event
Renting or hiring of motor vehicles provided to Company for transport of female employees who work on night shift	Karnataka Shops and Establishment Regulations mandates every employer to ensure that cab facility is provided to female employees working during night shift. Any cab facility provided for transport of female employees is mandated by statute and credit of the same would be available to the employer.
Travel Benefits to Directors	Travel Benefits to employees have been specifically restricted from taking credit but nothing has been mentioned about the travel benefits extended to non-executive directors and hence the same should be available. Credits on transactions for "non-business use" may not apply here since Company is accounting this as a business expenditure in their books of accounts.

From 01.02.2019, clause (b) of Section 9 of CGST Amendment Act, 2018 read with *vide Notification No. 2/2019-CT, dt. 29.01.2019,* replaces clause (b) of Section 17(5) to bring out the following amendments:

1. Credit shall not be available for the supply of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) of Section 17(5) except when used for the purposes specified therein. In other words, renting or hiring of motor vehicles, vessels and aircraft are blocked only if the purchase of such motor vehicles, vessels and aircrafts are blocked as per clause (a) or (aa). However, input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

   Further, credit in respect of life insurance and health insurance will continue to be blocked.

   Where steps are taken to include these inward supplies as an 'element' of an outward supply, then credit cannot be denied. *Proviso* to section 17(5)(b) very clearly saves the credit from being blocked when these inward supplies are themselves involved in making an outward supply (whether as independent supplies and composite or mixed supplies).

2. ITC on membership of club, health and fitness centre will also be considered as blocked

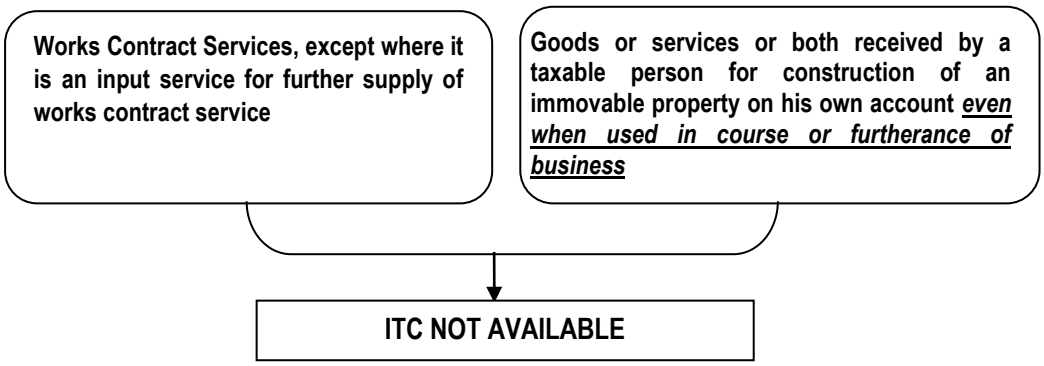
3. Travel benefits extended to employees on vacation such as leave or home travel concession will also not be available.

4. The provisions have been amended so as to allow ITC in respect of goods or services or both specified above if it is made obligatory for an employer to provide the same to its employees under any law for the time being in force.

CBIC vide *Circular no. 172/04/2022-GST dated 06.07.2022* has clarified the following:

- The proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act and not only to sub-clause (iii) of clause (b). [Para 3 of circular]
- "Leasing" referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts. [Para 4 of circular]

(c) Construction of Immovable Property (other than plant and machinery)



"Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. Please note that 'alterations' and 'repairs' are also included in this definition, if capitalized.

It is important to note that credit of GST paid on works contract services would be allowed only if the output supply is also works contract services. Input tax credit attributable to 'Works Contract Services' (including inward supply of goods or services) availed by builders/ developers for providing outward supply of services, would be eligible for ITC.

In respect of inward supply of works contract resulting in immovable property for own use, the correspond tax credits would be blocked if it is used "for" construction. Hence, costs directly related to construction would not enjoy any input tax credit, but costs which directly do not relate to construction would be entitled to credit.

Plant and machinery: mean apparatus, equipment, machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes land, building or any other civil structures, telecommunication towers; and pipelines laid outside the factory premises. The definition of plant and machinery is also unique in including foundation and support which could be a works contract service for which credit is allowed but excludes '*any other civil structure'*. The intention appears to be put to rest the disputes in the past where foundation and structure which may include civil construction which are part of the plant and machinery would be eligible for credit. Specific exlcusion like telecommunication towers may exclude some parts of other than the basic tower. These aspects may also be tested in time to come.

In this context it is important to note that a single contract may be awarded for construction including interrior works along with electronic installations comprising of audio-video equipment. As a composite supply, the electronic installations will also be taxed under HSN 9954 and be incapable of being extracted from the total contract price. But if this contract were treated as a mixed supply, the works contract too would be taxed at 28% (assumed for discussion purposes).Can credit of the entire project be claimed including the works contract

embedded in the single contract price even though taxed at 28%. Care appears to have been taken to permit credt only in respect of 'plant and machinery' which has been defined in an explanation that is made applicable to 'this section as well all sections in Chater VI of the Act'.

Reference may be had to Maha-AAR in the case of *Nipro India Corporation Private Limited (ARA- 33/2017-18/B- 41 Mumbai, dt. 28.05.2018)* where AAR has travelled to great lengths to collect data of plant and machinery embedded in the contract price and allowed credit to applicant in respect of such plant and machinery although entire contract sum was taxed under HSN 9954 as 'works contract service'.

Another aspect to be examined is 'factory building' – is it building (and hence credit restricted) or plant (and hence credit admissible)? Every structure is not immovable property. Please examine if the structure is a 'means of production' or the 'location of production'. Steel structures for gantry crane to move about would not be building but part of the supports for the crane. This area requires some technical insight and cannot be dismissed based on visual inspection by an untrained eye. Plant may be annexed to the ground – Courts have applied the test whether the annexation is the object of permanent beneficial enjoyment of the land. Machinery for metal shaping and electro-plating which was attached by bolts to special concrete bases that could not be removed was NOT treated to be part of structure or solid beneath as the attachment was NOT for beneficial enjoyment of the soil or concrete. If they retain their identity and are not for beneficial enjoyment of the land, then they will be creditable as 'plant and machinery' even though they may be annexed to the ground. Plant is erected and then an enclosure is fabricated around the plant, the enclosure is not directly involved in the operation of the plant although it is necessary to provide protection to the plant from weather and other factors that can adversely affect the production with the plant. Tendency could be to vaguely describe the enclosure, or its fabrication may be simultaneously with the plant, but test of identity remains to decide the admissibility or restriction of credit. Examine, if the enclosure is 'passive' component in the working of the factory or an 'active' component.

Please also refer discussion under section 2(52) on 'effect of affixation' whether it remains movable property or becomes immovable property and whether it promotes better enjoyment of the equipment or enhances value of land to which it is affixed/installed. This inquiry is necessary to test whether the bar on credit applies to equipment affixed/installed or is saved.

(d) Goods and/or services involved in inward supplies for self-construction of immovable property

Inward supply of goods and/or services for construction of an immovable property for 'own use' would also not be eligible for input tax credit. This restriction applies even when such immovable property is used in the course or in furtherance of business. Understanding the scope of 'immovable property' is very important. Immovable property is well understood to be land and building but it also includes everything that is attached to or forming part of the land and rights-in-land. Credit is blocked on all inward supplies leading to the establishment of such immovable property. Inward supply of services from real estate agent, architect, interior

decorators and contractors are all blocked as these are involved in the establishment of the immovable property. But, if inward supplies such as security, housekeeping and property maintenance are used after construction, then such credits are not blocked as these are received after establishment of the immovable property. One needs to note the fine line that the law draws to prevent indiscriminate extension of this credit blockage beyond the purpose for which it is specified.

Factors to be considered for deciding whether the credits on costs associated with works contract or construction of immovable property are available or not:

(i) If rent charged separately for bare shell and the fitouts – No Credit could be availed in respect of inputs used in construction of bare shell whereas credits could be availed on fitouts and related material if they are separable from the construction materials and labour. Separable not by securing a pricing break-down from the supplier but identifiable as a distinct asset class involved in the construction project activity. Often it is seen that in order to fasten turnkey responsibility of supply and installation of equipment and installations, single contract is awarded. Articles that do not form an integral part or create the identity of the immovable property such as electronic installations including audio-video equipment may be included the in same contract but as a separable item of supply with its own price, tax and other terms. Apart from risk of being treated as a mixed supply, there is a potential for loss of credit. Fit-out is a generic expression that includes false roofing and cornice-work, sound-proof panelling, glass partitions, anti-static carpets, loose furniture in lobby and client reception areas, pantry infra with movable furniture and wash-area facilities. Here too, those assets that do not form an integral part or create the identity of the immovable property may be identified separately so that credit can be availed without being lost as an integral part of the interior decoration works which merges inseparably with the immovable property;

(ii) Lease premium or lease rental for land on which immovable property is constructed – It is common to take land on lease (on payment of one-time premium and / or recurring rental) for long-term (say) 10 years to 99 years. And then invest in the construction of a building for use as factory, warehouse or office. Rent paid for building is not affected by this clause (d) as the 'lease' of building is not barred under section 17(5). However, the lease of land needs to be carefully understood. On one hand, lease of land may be equated with lease of building and credit claimed, regardless of what the lease is for – building or land only. Unless agreed otherwise, building (that is put-up on that land) belongs to the landowner at the end of lease tenure because of ownership of land all things attached permanently to that land merges with the property in that land and cannot remain the property of the lessee after the end of lease tenure. This merger is due to the construction in a permanent manner and coalescing of the two properties – land apart from building – only at the end of lease (called determination of lease).

Now, in lease, there is an expression 'demise' which needs to be carefully understood. For example, if land is taken on lease and lessee puts-up a temporary structure of tents and carries on his circus business. Lessee is liable to pay rent (for land) whether the

circus is running or the tent-structures get destroyed in a fire accident. This is because the 'demise' here is the land which continues to remain in the possession the lessee who may re-erect the tent-structures and restart the circus or terminate the lease and vacate the land. There is no third scenario possible and lease rentals will continue to accrue. Contrasted with another example, where the tent-structures are taken on lease from the landowner. And if this tent-structure were to be destroyed by a fire accident, there is no rent payable as the demise here is 'tent-structures'. When there is no demise, there can be no tenancy and hence no lease rental payable.

In the case of land taken on lease (and building put-up by lessee), inquiry is required into the 'demise' in respect of which premium and or rentals paid and then examine if the credit restriction is attracted or not. When parties contract in such a manner so as to themselves treat the land as being distinct from the building thereon, the 'demise' is the 'land alone' and not the 'land and building'. So, the question that arises is whether the building is where business is carried on or is the land where business is carried on. When 72/46 these two – land and building thereon – have once been accepted as separate and distinct, their uses must also be gone into. And by these tests, building is where business is carried on and GST paid on lease rental for building is not restricted. But land is where the building is put-up and lease rental for land is to put-up (during the years of construction) and retain it there (for the remainder of the lease tenure). Having said that land is the demise and it is separate from the building put-up on that land. Then, end-use of land and end-use of building most retain their separate identities and then stand the test of credit restriction under this clause.

Relatively simpler issues have been hotly contested in GST and this question is far-reaching and is not without forceful arguments. Reference may be had to decision of Orissa High Court in the case of *Safari Retreats Private Limited v. CC-CGST in WP(C) No. 20463 of 2018 vide Order dated 17.04.2019* where input tax credit has been allowed in respect of GST paid on construction of immovable property that is meant for further lease by the owners. As these are the views of the High Court, in the absence of contradictory decisions of any other jurisdictional High Court or from SC, this decision will continue to have force. However Special Leave Petition has been filed by the Revenue & the matter is pending in Supreme the Court. Care must be taken that with the introduction of rule 88B with effect from 01.07.2017 and the amendment in section 50(3) to attract interest when credit is availed and utilized, consequence of which, interest will apply if the law declared by Apex Court overturns this decision. Considered decision may be taken by as the quantum of credit may be quite large and so will be the consequences.

(iii) Accounting treatment in the books – Are the costs capitalized with the building or separately disclosed in the fixed asset register? Separate capitalization – Credit would be available. Accounting treatment is a good alibi for claiming credit. If an item of expenditure is not permitted to be capitalized as Property, Plant and Equipment (PPE), then the same cannot be treated by GST to be capital goods, whether creditable or not. Similarly, if any items of supply included in the turnkey contract is to be separated from

the construction material and labour for putting up the immovable property for the reason that the items DO NOT form an integral part or create the Identity of the immovable property, support must be available in the manner of capitalization. If these items actually comprise an independent but simultaneous item supplied, then they would be capitalized separately as an independent asset class or group as it demonstrates characteristics of use, usefulness and useful life that is different from that of the immovable property. Although not impossible, contradictions in accounting treatment with that in GST for claiming credit may generally not be free from litigation. In fact, where there are such contradictions, more transparent explanations and notes may be prepared so as to allow tax authorities to consider if they are concurred with the uniqueness of the GST treatment.

(iv) Things which cannot be retrieved without damage to the goods – Immovable and hence no credit. As to what is immovable property and what is movable property, reference is no longer about 'retrieve without damage' but 'purpose of affixation'. Refer to detailed discussion under definition of 'services' in section 2(102) where among other things, it has been explained that *"Based on the three limbs to the definition of 'attached to the earth' in section 3 of Transfer of Property Act, 1882, it appears that if the attachment (of equipment) is for beneficial enjoyment of the land (or building), then equipment becomes immovable property itself. But, if the attachment is for the beneficial enjoyment of the equipment then, equipment remains movable property. These principles were expounded in Subramaniam Chettiar v. Chidambaram Servai AIR 1940 Mad 527 which were reiterated in CCE v. Solid and Correct Engineering Works 2010 (252) ELT 481 (SC)"*;

(v) HSN Code in the Bill – If classified under the category of construction – Then credit may not be available. There is a settled principle of law that incorrect classification by the supplier should not lead to denial if in normal circumstances it would be eligible. There is no 'one fits all' rule that be applied here. HSN may change when it passes supplier's hands;

(vi) Separate purchase order and invoice from the vendor to bifurcate between transactions on which one would avail credits and on transactions on which one would not avail credits. Artificial bifurcation of otherwise inseparable works is not advised. It depends on the nature of the article supplied and the understanding of its installation will guide whether the two can be separated or not. If the parties are the same but operating under two separate documents (PO and Contract), it arouses suspicion. Further, suspicious are clauses where both components are taken together for computing advance, liquidation damages and recoveries and if there are 'cross-fall breach' clauses, then it becomes all the more worrisome.

Accounting of transactions and assigning the Project / Cost Code. Services may also be capitalized along with an asset class or asset group but that does not mean they cease to remain 'input services'.

(e) Goods or services or both on which tax has been paid under Section 10

Section 10(4) provides the conditions to be fulfilled for a person falling under composition scheme, with respect of input tax credit. One of the conditions states that a person opting for the composition scheme should not collect any taxes from the recipient. As no taxes are paid by the recipient, no input tax credit can be availed by them either. For this reason, any tax paid by supplier under section 10 will be restricted by this clause under section 17(5).

Since, no tax has been charged by the supplier (opting for composition), this restriction may seem academic. But, not quite so, as section 10(4) authorizes tax authorities not only to take action against erring composition taxpayers for collecting tax, section 17(5)(e) authorizes action against recipient-taxpayers who may have taken credit of the same, even innocently.

(f) Goods or services or both received by a non-resident taxable person except on goods imported by him

A non-resident taxable person (NRTP) is a person who temporarily supplies any goods or services within India even though they are not a resident of the taxable territory. For such NRTPs, restriction has been cast in respect of the goods or services or both received within India. In respect of the goods or services or both received within India, no input tax credit can be availed by them. However, they are free to avail the input tax credit of the goods imported by them from outside India.

Reference may be had to the discussion in the context of section 27 about Casual Taxable Person compared to Non-Resident Taxable Person. Indian FDI regulations place a restriction on foreign companies entering in India and undertaking 'business-like' activities without establishing a taxable enterprise. And income-tax law will impute a taxable presence in the form of a 'business connection' or 'permanent establishment' in India to subject the income of this presence to tax in India. Conclusions and compliances under income-tax and FDI will impact the conclusions in GST about Casual Taxable Person v. NRTP and hence credit entitlements to each. Care must be taken of the same and not to apply this clause (f) mechanically. Registration as NRTP may itself need to be examined carefully due to the adverse credit consequence to NRTPs compared to Casual Taxable Persons

(fa) Goods or services or both used for activities relating to CSR

Clause (fa) has been inserted via The Finance Act, 2023 stating that goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013. This provision is notified vide *Notification No. 28/2023 dated 31.07.2023*, with effect from 01.10.2023.

This amendment seeks to put an end to the divergence of views prevalent. However, there are certain aspects that points are noteworthy. It is when goods or services or both are 'used' or intended to be used' in 'activities' relating to CSR obligations that the input tax credit is blocked.

With the clause being specific to companies with obligation under Companies Act, credit in respect of such activities in excess of CSR limits or even without CSR obligations and by non-corporates will not be blocked subject to the other restrictions as specified under GST law. For the reason that the insertion of this clause is not an interpretation but a specific legislative provision which cannot be extended to analogous use cases contrary to the express words or to affect credit admissibility prior to 01.10.2023.

After this insertion, one may also argue that the insertion of this blockage would be from a prospective date. Therefore, before this comes into effect, the ITC would be available on all CSR related obligations.

Each transaction must be examined on its own merits, and these clauses, at best, addresses only a sub-set of CSR activities. One must be cautious before availing any input tax credit on the aforesaid expenses.

(g) Personal consumption

Goods received by a registered person may be used for 'personal' consumption. It would be apposite to recollect para 4 of Schedule II where it states two situations that is relevant for present purposes, namely, (a) diversion from intended end-use in business and (b) private use of business assets (and the third situation is not relevant for present purpose).

Business assets may or may not include inputs and capital goods on which input tax credit has been availed. So, the scope of para 4 of Schedule II is far wider than this clause (g). Presently, the concern is only in respect of 'personal' use which would be a sub-set of para 4 of
Schedule II. Reason why it is considered to be a sub-set and not something else outside of Schedule II is because Schedule II completely and comprehensively covers all situations regarding the treatment to be extended to an actual supply or deemed supply by Schedule I.

All assets of an incorporeal taxpayer (any kind of legal entity) are used and consumed by employees or other natural persons. This clause (g) does NOT get attracted in all those situations and credit denied. The 'nature' of use or consumption must be examined. For example, a software engineer uses the computer provided by the company along with the workstation provided in the air-conditioned environment. None of these are personally consumed because all facilities provided are 'tools-of-trade' that company must provide in order to avail the work and skill of the software engineer. Then it may seem like all inward supplies used or consumed may be justified in this manner. Not quite so and some criteria could be devised to differentiate – whether it is a means of performing their duties or the rewards after performing their duties – as personal consumption inherently yields no direct and proximate benefit to the company in making outward supplies.

This clause (g) should not be considered as a threat to claim credit if the inward supplies on which credit is being claimed are diligently availed. Section 16(1) permits credit on everything but with an 'end use' criteria – in the course or furtherance of business. Income-tax law also

allows deduction in respect of expenses that are 'for earning income' in the business. But these two statutes have different objectives in this regard. Income-tax is determining the 'profit before tax' whereas GST is determining the 'credits in respect of outward supply'.

By this reasoning, it appears that clause (g) could be pressed into service when there is no 'nexus' between items in respect of which credit is availed and outward supplies. Care must be taken not to use the language of section 16(1) liberally and without check or limits. Clause (g) provides the check to see if the 'immediate and ultimate' use or consumption of any item is for personal benefit to the person (employee or director or any person who can consume on behalf) or not. If the immediate benefit is for the said person but the ultimate benefit is for the supplier company, the credit would not be restricted by clause (g).

Inward supplies by company such as raw-material, capital goods including computers, air-conditioning, work areas, factory and office building taken on lease, flight tickets, hotel accommodation, etc. are creditable by the company even though they are for 'immediate' consumption by employees; they are for 'ultimate' benefit by company.

However, inward supplies such as video games, cinema or IPL tickets, theme-party organized, holiday package, etc., are 'unlikely' to be creditable by the company as they are for 'immediate and ultimate' consumption by employees only.

Then there would be an 'in-between' category where though it is 'immediate' consumption by employees, there may be a proportion of 'ultimate' benefit to the company. These cases, discretion must be exercised to identify admissibility of credits to the company. A perfect rule cannot be fixed for all cases nor can credit be completely allowed. Care must be taken to identify if the inward supplies are in the nature of 'tools-of-trade' which Employer makes available to Employees to use in order to discharge their duties, such inward supplies will not come within this exclusion. But if the inward supplies are not in this nature, credit will most likely come within this exclusion.

And for these reasons, income-tax rules of allowance/disallowance cannot be applied in GST as every expenditure 'by' the business is the allowed in income-tax where 'for' the business is admissible in GST. Please refer discussion under section 16(1) on (i) commencement of business and (ii) used in business, in respect of various expenses and the effect on credit.

Deemed supply to related party (especially employee) is attracted by Schedule I, para 2 even when no consideration is present. Where employers-employees are involved, gifts that are not remuneration for their employment services is a 'perquisite' above Rs. 50,000/- per annum and therefore comes within the exclusion by Schedule III, para 1. Where any other related persons are involved, care must be taken to examine whether there is a 'diversion of business assets' (not limited to fixed assets but all assets of the business even if it is not capitalized) are used for 'non-business purposes'. Where credit is availed and thereafter, they are 'diverted' care must be taken to address the 'treatment' prescribed in Schedule II, para 4(b). Although Schedule II does not itself define supply, it provides 'classification' whether the

supplies are to be 'treated' (as goods or as services), existence of entries in Schedule II arouses questions about taxability of said transactions. Without the transaction, at least in the opinion of lawmaker, its treatment would not be provided and conversely, existence of a treatment indicates (possible) taxability.

Whether such diversion of business assets is supply or not may be debated but attention must be drawn not only to (i) taxability of such diversion but also (ii) admissibility of credit on such inward supplies. If it is concluded that there is no supply involved in such diversion, then credit could easily come within the disqualification under 'personal consumption' and *vice versa*.

Use of business assets (on which credit is availed) for personal consumptions must be understood that assets whose predominant use is for 'non-business purposes'. For instance, equipment installed in recreation room for use by Employees or in a creche or day care center or sickroom run by the Employer are some instances where the use of said business assets are for personal enjoyment by the employees, perhaps for welfare or goodwill gesture or other benefit. Such instances can also include health center, gym, enclosed play area, etc., put by the Employer for use by Employees and other business associates. Contrasted with this tools-of-trade given by Employer to be used by Employees such as laptop, air-conditioning, etc., which, although used by Employees, their predominant benefit inures to the Employer.

Further, every telephone call made from the office does not need to be justified as to its *'use in furtherance of business'*. Also, there is no requirement to admit personal element in telephone expenses (and all such inward supplies) without examining the (i) tools-of-trade and (ii) 'immediate and ultimate' benefit consideration discussed above. There is also no requirement to automatically consider all such inward supplies as being liable for reversal of an amount of 5 per cent (as item D_2 under rule 42). If there were compulsory element of 'personal consumption' in all such inward supplies then, the treatment of such expenditure in income-tax (in computation of income from business or profession) or its disclosure in CARO cannot be ignored. As all these different legislations are looking for the same 'assertion on facts' by the legal entity which the registered person is an integral part.

Section 17(5) is given the title of an 'imperfect negative list' and it is deliberate so that there is room to accommodate *bona fide* cases where credit ought to be allowed as there is greater proportion of benefit ultimately flowing to the company. Courts will have final say in the matter that we will need to learn from as things unfold.

(h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

Consider an illustration where input 'A' is converted into output 'B' (both being goods) and a certain quantity of output 'B' that are produced but not yet supplied are destroyed by fire within the factory premises. Now, is GST payable on output 'B' or is it sufficient, if input tax credit taken on input 'A' is reversed? Destruction of a part of output 'B' does not satisfy the requirements of 'supply' and therefore, there is no question of payment of tax on the stock of 'B' that are destroyed by fire before they are supplied. This would not have been the case under Central Excise law (as Central Excise Duty was payable on manufacture) as those

principles do not find place in GST law. Under the GST law, on destruction of stock of 'B', the only tax that remains to be paid is the proportionate credit availed on input 'A' because goods destroyed are 'A' only in the form of 'B'.

Credit was properly availed on 'A' and was even used properly in the course or furtherance of business in the production of 'B' which was subsequently destroyed before being supplied. This renders the credit availed of 'A' to fail the 'vesting condition subsequent' attached to validity of credit taken under section 16(1) being proper 'end use' of 'A'. Credit is not a 'vested right' at the time of receipt of inputs but only on satisfying all 'vesting conditions', including its participation in a taxable outward supply.

Please note that while credit reversal (discussed above applies to goods destroyed) flows from the operation of a specific provision in section 17(5)(h) but no such reversal because though inefficiently used, they are still USED as accepted and agreed at the time of taking credit by this clause [please refer discussion under section 19(3) where abnormal loss in the hands of job-worker will be deemed to be a supply in the hands of principal due to an express provision].

As the 'reasons' for reversal is specifically stated in this clause (h), reversal is 'without any interest' consequence. If the credit was 'ineligible' and is reversed, that is ineligible *ab initio*. Such reversal is not the same as reversal due to change of circumstances contemplated in this clause (h) which is a current change requiring reversal.

Therefore, it becomes clear that the words 'in respect of' are not limited to the very articles that are disqualified from claim of input tax credit under this sub-section but also credits 'in respect of' goods or services linked to the disqualified articles are also liable to be disqualified.

Now, in order to discuss this clause (h), it may be appropriate to first describe the scope of the words listed here. A short description of each of the words given above is depicted below:

(a) Lost – When goods are missing, not traceable or inexplicable absence. Word 'lost' is not to be confused with 'loss'. Loss is explicable but nevertheless a 'loss' but certainly not 'lost'. Explicable loss is in-process loss which may be normal loss. Explicable losses do not attract reversal of credit under this clause (h) because the 'credit condition' accepted and agreed at the time of taking credit was that the said goods WILL BE USED. And when explicable in-process (normal) loss occurs, the fact that the said goods have been used is undeniable albeit inefficiently for failing to generate produce output.

    Lost, on the other hand, is a clear indication due to the inexplicable nature of this situation that the said goods ARE NOT USED as accepted and agreed. As such, 'lost' attracts reversal of credit but not 'loss'. Explicable means explainable and being able to explain the reasons for the loss does not include any loss due to "not using" the said goods. As additional notes, it merits to mention that full credit may be taken and retained and even utilized in case of goods which are involved in explicable in-process

loss, whether normal or abnormal [exception is when abnormal loss occurs in the hands of job-worker, please refer detailed discussion in the context of deemed supply by principal under section 19(3)].

With regard to in-process loss of inputs a very interesting decision may be found in *Ashok Leyland Ltd v. CCE, Nagpur [2004 (169) ELT 131 (Tri.Mumbai)].*

(b) Stolen – When any goods are found to be less upon physical verification, it may be considered as stolen. This will require reversal of any input tax credit taken earlier. Stolen may or may not be covered by suitable insurance. As such, 'insurable interest' in case of goods (inventory or assets) on which GST credit is claimed ought not to be at the carried value in the book as per AS 2/AS 10 or Ind AS 2/Ind AS 16 but value as per "*balance sheet PLUS GST credit availed*".

(c) Destroyed – Any goods which get destructed due to any natural calamity like flood, earthquake or a manmade event like fire, water leakage etc. However, if the goods reach to a certain level of destruction that it cannot be possibly reversed, then this clause gets attracted. Destroyed is not an expression that is used to refer to normal wear and tear or normal ageing deterioration. Destroyed leans towards a 'sudden occurrence', whether it could have been avoided or not, the outcome is relevant and not the reason for this occurrence. It's not an accounting treatment but a fact to be observed or verified.

(d) Written off – If any goods are having a certain value as per the books of accounts but are completely written off due to any reason, this clause will get attracted. This can include goods getting written off due to obsolescence or lapse of time. But 'write-off' must be differentiated from (a) 'write-down', which is a temporary and sometimes reversible accounting treatment in order to more accurately reported the carried value of Property, Plant and Equipment under AS 28 or Ind AS 36 and (b) 'charge-off' by claiming 100% depreciation in respect of assets costing below a certain value per unit. Both these instances are NOT covered by this clause (h). However, due to poor understanding of the differences in each of these words, there may be some misapplication of the provision. Once time to claim credit in section 16(4) has passed, then the reversal will be irreversible even if done under misinformation.

(e) Disposed-off by way of gift or free samples– Any goods which are disposed through these two mechanisms will be covered here. Key words to note are:

(i) 'disposed' which is a word that appears in 3 key places in GST law (all other places it is used are in the context of 'disposal of an application or appeal', it is used 11 times in CGST Act). And they are (i) section 7(1)(a), (ii) para 1, Schedule I and (c) this clause (h). The expression 'disposed' not used as a synonym of 'sale'. Disposed is akin to discard or get-rid-off or clear away and implies articles that are 'unfit for sale'. Whereas the expression 'sale' always implies warranty of merchantability even if it is offered at a deep discount due to change in trends or end of season, etc. Also, articles are 'unfit for sale' not only when their quality is

unsuited (as per law, if any, and as per trade understanding) but also in the presentation in quality or quantity is such that is not suited for effective use. For e.g., tester perfume in 5 ml bottles, shampoo in 10 ml sachets, etc., indicate lack of fitness for sale although the products may be of standard quality but are presented in non-standard quantity that they are 'unfit for use' as they are intended.

(ii) 'By way of' is an expression that refers to 'the way of doing something'. It is not used for 'such as' or 'namely'. Hence, 'disposed off by way of' means 'gift or free sample' are the 'ways' in which goods that are 'unfit' are given away. Given that 'disposed' is one of the forms of 'supply', a lot of care must be taken not to reverse credit when in fact, output tax should have been on the outward supply. Any error in this understanding could result in losing the reversed credit (after time lapse) and output tax still being demanded.

Now, 'gift' and 'free sample' may be understood not in isolation but in the context of 'disposal' and these being the 'ways' in which such disposal is taking place. This understanding clears any confusion about gift and free sample of articles of 'merchantable quality'. Gift is a form of transfer if it is irrevocable and hence it is supply. Free sample indicates delivery of goods for use or consumption on non-contractual basis. Articles put-up for distribution are 'unfit for sale'. Not that these articles are sub-standard or even harmful, but they are not in commercial quantity or presentation. For example, perfumes are presented in tester bottles which are very small pinch sized only to enthuse customers to 'use without buying' or shampoo presented in sachets and inserted inside magazines which are of insufficient quantity to satisfy actual bathing use but sufficient for customer to 'use without buying'. Articles 'lacking merchantability' is any aspect of merchantability that is absent and quality is only one aspect and others are quantity. It is such articles 'lacking merchantability' when they are given away that is amounts to *"disposal 'by way of' gift or free sample"*. Care must be taken not to gloss over the words "by way of" which greatly affects our conclusions.

But where the articles are 'fit for sale' and delivered (even without consideration) will be deemed supply under para 1 of Schedule I. Refer detailed discussion of this deemed supply under Schedule I.

And where credit is availed on goods that are 'disposed of', then para 1 of Schedule I is attracted due to the words *"….disposal of business assets where input tax credit has been availed on such assets"*. Once credit is reversed on account of the fact that the said goods are 'disposed off' then, there cannot be a second demand for tax by deeming fiction flowing from Schedule I when the said goods are taken out on account of disposal.

Some examples of goods 'not meant for supply' are as follows:

- Prescription drug samples marked 'Physician's sample not to be sold'
- As per the Legal Metrology (Packaged Commodity) Rules, 2011 sale of packaged commodities by a manufacturer, importer or wholesale dealer to an Industrial consumer shall have the declaration 'Not for retail sale'.

Some experts argue that nothing done in business is free and therefore credit reversal would NOT always be sufficient compliance as even this activity is in course and furtherance of business. This matter may also be tested in time to come. Reference may be had to discussion on various examples in the context of valuation under section 15 of 'free supplies' which may actually be for consideration that is in non-monetary form.

Implications under GST in case of Expired Medicines –

In case of Pharmaceutical Industry, the medicines carry expired date and it is the duty of the manufacturer to destroy the unsold medicines on the date of expiry. Accordingly, the manufacturer collects such unsold expired medicines from various levels in the supply chain and destroys the expired medicine based on the provisions of the Drugs and Cosmetics Act, 1940. It would be relevant to note that the manufacturer compensates the supply chain for loss due to expired medicine. *Circular 72/46/2018-GST dated 26.10.2018* has been issued to highlight the implications under GST on such expired medicine. These implications have been discussed below by way of an example

Assumption

— Medicine purchased / imported at ₹ 100/- and GST paid ₹ 5/-

— Medicine sold to Distributor at ₹ 1000/- and GST charged ₹ 100/-

Scenario	Clarification Issued – Options	Implications
Original Sale 2017-18 (till March 31, 2018) **Expired Stock Returned** By September 30, 2018	**Option 1** 1. Seller to issue credit note to Distributor for ₹ 1000 + 100 2. Distributor to reverse credit of ₹ 100 3. **Seller to reverse credit of ₹ 5 (GST paid on procurement)**	Seller to receive expired stock under credit note route (option 1) and thereby restrict credit reversal to the tax paid on procurement
	Option 2 1. Distributor to issue Invoice for ₹ 1000 + 100 2. Seller to avail credit of the same **On destruction of goods, Seller to reverse credit of Rs 100 (GST paid on return supply)**	

Original Sale 2017-18 (till March 31, 2018) **Expired Stock Returned** after September 30, 2018	**Option 1** 1. Seller to issue credit note to Distributor for ₹ 1000 + **₹ 0** 2. Credit availed by distributor may be affected due to non-payment of consideration for the inward supply and return of stocks. However, distributor would claim compensation of **₹ 100** credit lost by him which may be a separate taxable supply of 'tolerating and act' (of breach by Seller). 3. **Seller to reverse credit of ₹ 5 (GST paid on procurement)**	Option 1 leads to reversal of credit of Rs 105 whereas Option 2 leads to reversal of credit of ₹ 100. Effectively, the Seller (importer) is required to reverse credit on the selling price which can be substantial amount. This needs to be examined specifically in terms of Section 18 of Drugs and Cosmetics Act, 1940 which prohibits sale of Expired Stock
	Option 2 1. Distributor to issue Invoice for Rs 1000 + 100 2. Seller to avail credit of the same 3. **On destruction of goods, Seller to reverse credit of ₹ 100 (GST paid on sales)**	

It is a wonder how 'expired medicines' can at all enjoy same HSN as 'medicines'. Surely, something has occurred that brings about this categorization as 'expired'. And when HSN cannot remain the same, inquiry is required into what is the 'object of supply'. Question to inquire is whether they are some other goods or when it is not goods of any kind, whether this repayment of original billed value is therefore a service (in GST terms). It all depends on the contractual arrangement between the parties to see 'who bears the financial risk of expiry of drugs'. And this issue is common in all other sectors and there cannot be a 'one-fits-all' rule but in sectors like pharma or food products, there is some limits to contractual liberty that is set by the governing law.

Circular no. 105/24/2019-GST dated 28.06.2019 (since rescinded vide *Circular No. 112/31/2019-GST dated 03.10.2019*) had expressed certain views from Indian Contract Act that was not well received by trade, not so much of the principles brought out, but the delay in issuing such a circular as nearly two-years of business practices had gone in one way. Nothing new was said in this circular because it stated only certain 'application points' from Contract law. And this circular was decided to be withdrawn by GST Council in its 37th meeting and very interestingly *ab initio*. Generally, when circulars were withdrawn under the Central Excise law, the withdrawal would be 'with reasons' such as, Court ruling to the contrary or

change of law or change of thinking by CBEC (as it then was called). By withdrawing *in silentio,* more room seems to be left for the 'application points' brought out in this (now non-existent) circular to be tested out in Courts. Experts advise great caution while writing up 'returns policy' in GST regime to consider the risks involved in ignoring these application points which may still be applied to issue notices without citing this circular (non-existent) but by adopting the application points contained in it.

(i) Any taxes paid in accordance with the provisions of Sections 74, 129 and 130

Section 74 talks about payment of taxes in a situation where taxes are not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of ***"fraud or willful misstatement or suppression of facts".*** If the supplier is making payment of taxes under forward charge due to the aforesaid reasons, no input tax credit will be available to the recipient. In case of reverse charge, if the recipient is making payment of taxes under this section, even the recipient will not be allowed to avail input tax credit.

Section 129 talks about detention, seizure and release of goods and conveyance in transit. Further, section 130 mentions about confiscation of goods and/or conveyance or redemption fine and levy of penalty under other provisions of the Act. In both the cases if any payment is made by any person under these sections, no input tax credit in respect of these will be available.

Through this point, input tax credit is proposed to be blocked wherever *mens rea* is proven/accepted. In such cases, since taxes had not been paid earlier due to any fraudulent intent, no input tax credit is allowed by the law. But the question that comes up, say, in case of reverse charge demanded under section 74, whether the registered person should claim the tax paid or not, because the question of 'fraud, etc.' will be decided by Tribunal/Court and the time-limit under section 16(4) will encourage registered person to claim credit on payment. Consider a registered person who forfeits credit on the basis of the SCN being under section 74 and later it turns out the Tribunal/Court confirmed demand but sets aside extended period. In other words, as per section 75(2), if 'fraud, etc.' alleged in a notice issued under 74 is not established then the same notice 'will be deemed' to be notice under section 73. In this case, credit was eligible by the registered person was misguided by the fact that SCN was issued under 74. Great care and attention must be paid even to admit and pay tax demanded due to the direct and indirect implications under this clause (i).

In case demand for output tax on reverse charge basis is discharged, where demand is under section 73 (or under 74 but relief under section 75(2) is allowed), tax discharge would be admissible as input tax credit. There are doubts whether such tax discharged *via* Form GST DRC-03 challan would be admissible or there is an implicit requirement that such demands must be discharged only *via* Form GSTR-3B. When credit is admissible on demand discharged, mode of its discharge cannot alter the entitlement to credit. Taxpayer must ensure that tax so discharged flows into ECrL by including the said amount of credit in Table 4A-5 of GSTR-3B, even if the same is not reported in 3.1(d) as a liability.

Demand for output tax discharged, whether under section 73 or 74, such taxpayer being the Supplier is not expressly barred from issuing debit note under section 34 in respect of the liability so discharged. And unlike credit notes, debit notes do not have any time limitation in section 34. But Recipient of such supplies and these debit notes must take care to find out whether the liability discharged was a demand under section 73 or 74 as Common Portal does not have any functionality to track the same yet.

17.3 FAQs

Q1. Where goods or services or both received, is used for both taxable and non-taxable supplies, what would be the input tax credit entitlement for the registered person?

Ans. The input tax credit of goods or services or both used in respect of taxable supplies can only be availed by the registered person.

Q2. Whether the taxable supply would include supplies on which tax is payable by recipient on reverse charge basis?

Ans. No.

17.4 MCQs

Q1. Which of the following is included for computation of taxable supplies for the purpose of availing credit?

(a) Zero-rated supplies

(b) Exempt supplies

(c) Both

(d) None of the above

Ans. (a) Zero Rated supplies

Statutory Provisions

18. Availability of credit in special circumstances

(1) Subject to such conditions and restrictions as may be prescribed-

(a) 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 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;

(b) a person, who takes registration under sub-section (3) of section 25 shall 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;

(c) where any registered person ceases to pay tax under section 10, he shall 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 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall 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.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1), in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered 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 person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic 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 exercising such option 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.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such

percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided 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 determined under section 15.

Extract of the CGST Rules

40. Manner of claiming credit in special circumstances.

(1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely, -

(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

*(b) [64][the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM **GST ITC-01** to the effect that he is eligible to avail the input tax credit as aforesaid:*

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

(c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods–

(i) *on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;*

(ii) *on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;*

[64] *Substituted vide Notf No. 22/2017 – CT dt.17.08.2017 w.e.f. 01.07.2017.*

(iii) *on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;*

(iv) *on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;*

(d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of *central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;*

(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, *in FORM GSTR- 4, on the common portal.*

(2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

41. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business

(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in ***FORM GST ITC-02****, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:*

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

[65][Explanation: - For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.]

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

[65] *Inserted vide Notf No. 16/2019-CT dt. 29.03.2019.*

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

[66][41A. Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory

(1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details ***in FORM GST ITC-02A*** *electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:*

Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Explanation. - For the purposes of this sub-rule, it is hereby clarified that the 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

(2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger].

44. Manner of reversal of credit under special circumstances

(1) The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely, -

(a) for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;

(b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

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[66] *Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019.*

Illustration:

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months= 5 months ignoring a part of the month

Input tax credit taken on such capital goods= C

Input tax credit attributable to remaining useful life= C multiplied by 5/60

(2) [67]*[The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.*

(3) *Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in subsection (4) of section 18 or, as the case may be, sub-section (5) of section 29.]*

(4) *The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in* ***FORM GST ITC-03****, where such amount relates to any event specified in sub-section (4) of section 18 and in* ***FORM GSTR-10****, where such amount relates to the cancellation of registration.*

(5) *The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.*

(6) *The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of* [68]*[central tax, State tax, Union territory tax and integrated tax]:*

Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1.

[69][44A. Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar – Central Goods and Services Tax Rules, 2017

The credit of Central tax in the electronic credit ledger taken in terms of the provisions of section 140 relating to the CENVAT Credit carried forward which had accrued on account of payment of the additional duty of customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid at the time of importation of gold dore bar, on the stock of gold dore bar held on the 1st day of July, 2017 or contained in gold or gold jewellery held in stock on the 1st day of July, 2017 made out of such imported gold dore

[67] *Substituted vide Notf No. 17/2017-CT dt. 27.07.2017, w.e.f. 01.07.2017.*
[68] *Substituted by Notf No. 15/2017-CT dt. 01.07.2017, w.e.f. 01.07.2017.*
[69] *Inserted vide Notf No. 22/2017-CT dt. 17.08.2017.*

bar, shall be restricted to one-sixth of such credit and five-sixth of such credit shall be debited from the electronic credit ledger at the time of supply of such gold dore bar or the gold or the gold jewellery made therefrom and where such supply has already been made, such debit shall be within one week from the date of commencement of these Rules.]

Related Provisions of the Statute

Section or Rule	Description
Section 2(19)	Definition of 'Capital Goods'
Section 2(59)	Definition of 'Input'
Section 2(60)	Definition of 'Input Service'
Section 25	Procedure for registration
Section 9	Levy and collection
Section 10	Composition levy
Rule 40	Manner of claiming credit in special circumstances
Rule 44	Manner of reversal of credit under special circumstances
Rule 44A	Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar.

18.1 Introduction

Input tax credit is normally available to a registered person who engages in taxable outward supplies and such person not being a composition taxpayer. However, in certain cases, credit would be available on inputs held in stock, inputs contained in semi-finished and finished goods and on capital goods even though the supplier was unregistered or engaged in exempt supplies or was under the composition scheme on the date of procurement of such goods or services. Conversely, instances where input tax credit legitimately availed needs to be reversed has also been dealt with under this Section.

18.2 Analysis

Eligibility of input tax credit on inputs held in stock and contained in semi-finished and finished goods held in stock: The credit on inputs held in stock and inputs contained in semi-finished goods and finished goods held in stock is available in the following manner:

Supplier	Inputs	Input Services	Capital Goods	Stock to be considered as on
Liable for registration (crosses the prescribed threshold limit) – Applies for registration within 30 days of becoming liable	Available	Not Available	Not Available	Day immediately preceding the date from which he becomes liable to pay tax

for registration and obtains registration				
Voluntary Registration	Available	Not Available	Not Available	Day immediately preceding the date of grant of registration
Composition Scheme to Regular Scheme	Available	Not Available	Available	Day immediately preceding the date from which supplier is liable to pay tax under regular scheme
Exempt Supplies become Taxable	Available	Not Available	Available*	Day immediately preceding the date from which exempt supplies become taxable

** Only for capital goods previously used exclusively in making exempt supplies.*

- Credit on inputs includes inputs and inputs contained in semi-finished and finished goods. Credit on input services is not available under any circumstance.
- Declaration in **Form GST ITC-01** must be filed within thirty days from the date of becoming eligible to input tax credit. Rule 40 of the CGST Rules requires a declaration to be filed containing details of stocks and capital goods along with a certificate from a practicing Chartered Accountant or Cost Accountant where the aggregate credit of CGST, SGST/UTGST and IGST so claimed exceeds ₹ 2 lakhs.
- The supplier would not be entitled to credit of goods or services or both after expiry of 1 year from date of issue of tax invoice (this restriction applies even to capital goods though this may not have been the intention).
- The credit on capital goods shall be reduced by five percentage per quarter or part thereof from the date of invoice.
- Credits are subject to verification of details furnished by the supplier in **Form GSTR-1** or **Form GSTR–4** on the common portal only in case of conversion from composition to regular scheme or when exempt supplies become taxable supplies. Verification is not possible for new registration cases as the supplier was unregistered at the time of procurement.

Note:

In case of exempt supply becomes taxable: There is no saving clause in the event the taxable person entertained a *bona fide* view as to the non-taxability of certain supplies or availability of an exemption which is later overturned by a superior Court and the demand crystallizes. In

this scenario, limitation of taking of input tax credit lands a double blow to this taxable person. That is, not only would GST have been paid on inputs, input services and capital goods on which no credit would have been availed (due to this *bona fide* view having been entertained) but also, the full extent of the output tax becomes payable (without any relief towards credit that would otherwise have been available) due to the decision of the superior Court. One needs to exercise caution while entertaining a view about non-taxability or exemption. At the same time, it is not permitted to take a hyper-conservative view – where even with the availability of a clear and absolute exemption, the taxable person chooses to pay GST in order to protect credit from the limitation. This option cannot be taken in view of the mandatory nature of such exemptions as clearly stated in explanation to section 11. It could lead to denial of credits as the supply was not taxable.

Examples:

(i) A person becomes liable to pay tax on 1st August 2021 and has obtained registration on 15th August 2021. Such person is eligible for input tax credit on inputs held in stock as on 31st July 2021.

(ii) Mr. A applies for voluntary registration on 5th August 2021 and obtained registration on 22th August 2021. Mr. A is eligible for input tax credit on inputs in stock as on 21st August 2021.

(iii) Mr. B, registered person was paying tax under composition rate upto 30th August 2021. However, w.e.f. 31stAugust 2021, Mr. B becomes liable to pay tax under regular scheme. Mr. B is eligible for input tax credit on inputs held in stock as on closure of business hours on 30th August 2021.

Illustration (Rule 40): Manner of claiming credit in special circumstances

Akshay Steels Limited is a manufacturer of iron and steel. It procures raw materials and inputs such as iron ore, chemicals, gases, etc. and capital goods including plant and machinery, for the manufacture of such iron and steel. In this example, it has been assumed that iron and steel (which is the outward supply of Akshay Steels Ltd) is exempt from payment of taxes until 31-Mar-2021. Iron and steel become taxable with effect from 01-April 2021. The method of taking of input tax credits on inputs contained in stock and capital goods as on 31-Mar-2021 is covered by this illustration

Particulars	**Amount (₹)**
Value of inputs in stock on 31-March-2021	1,00,000
IGST @18%	18,000
All inputs were procured after 01-Jul-2020	
Value of inputs contained in semi-finished goods held in stock on 31-March 2021	4,00,000
CGST @ 6%	24,000
SGST @ 6%	24,000

All inputs contained in semi-finished goods were procured after 01-May-2020	
Value of inputs contained in finished goods held in stock on 31-March 2021	50,000
CGST @ 6%	3,000
SGST @ 6%	3,000
Only inputs worth ₹ 40,000 in finished goods were procured after 01-April 2020	
Capital Goods procured *vide* invoice dated 22.01.2021	20,00,000
IGST Paid @ 18%	3,60,000
Credit available in respect of inputs:	
CGST ***(Note 1)***	26,400
SGST ***(Note 2)***	26,400
IGST ***(Note 3)***	18,000
Total credit available on inputs	**70,800**
Value of capital goods used exclusively in relation to exempted goods held on 31-March 2021	20,00,000
IGST @ 18%	3,60,000
Credit available in respect of capital goods:	
Date of invoice of capital goods	22-Jan-2021
Date from which the exempt goods become taxable	01-Apr-2021
No. of quarters from date of invoice	1
Percentage points to be reduced (5% per quarter) **(Note 4)**	5%
IGST paid on the capital goods used exclusively in relation to goods exempted up to 31-Mar-2020	3,60,000
ITC to be reduced by 5%	(18,000)
Credit (IGST) available on capital goods	**3,42,000**

Working notes:

Note 1: CGST credits on inputs in stock held on 31-March 2021:

a	ITC on the value of inputs		
b	ITC on the value of inputs contained in semi-finished goods: All inputs were acquired within 1 year prior to the effective date on which the goods become taxable. Hence, entire ITC would be allowed.	24,000	

c	ITC on the value of inputs contained in finished goods: Out of the total stock of ₹ 50,000/-, inputs totalling to ₹ 10,000/- are older than 1 year from the effective date on which the goods become taxable. Therefore, ITC to this extent stands disallowed. ITC on inputs contained in stock of ₹ 40,000 would be eligible. [Eligible credit = 40,000 * 6%]	2,400	
	CGST credit available on inputs		**26,400**

Note 2: SGST credits on inputs in stock held on 31-March-2021:

a	ITC on the value of inputs		
b	ITC on the value of inputs contained in semi-finished goods: *Refer Note 1*	24,000	
c	ITC on the value of inputs contained in finished goods: *Refer Note 1*	2,400	
	SGST credit available on inputs		**26,400**

Note 3: IGST credits on inputs on stock held on 31-March 2021:

a	ITC on the value of inputs: All inputs were acquired within 1 year prior to the effective date on which the goods become taxable. Hence, entire ITC would be allowed.	18,000	
b	Input tax credit on the value of inputs contained in semi-finished goods	-	
c	Input tax credit on the value of inputs contained in finished goods	-	
	IGST credit available on inputs		**18,000**

Note 4: Rule 40(1)(a) of the CGST Rules provides that input tax credit on capital goods can be claimed after reducing 5% per quarter of a year or part thereof, from the date of invoice in respect of which capital goods are received. Therefore, the number of quarters is 1, being the first quarter of the year 2021.The reversal of credit would therefore be, to the extent of₹ 18000 (5% of ₹ 3,60,000).

Section 18(4) mandates credit reversal when a registered person switches from regular scheme to composition scheme or goods and services supplied by him become wholly exempt:

- Pay an amount by debiting electronic cash ledger / credit ledger, equivalent to input tax credit of -
    - Inputs held in stock

- Inputs contained in semi-finished or finished goods held in stock and
- Capital goods

- On the day immediately preceding the date of such switch over.
- Balance of input tax credit lying in the electronic credit ledger, after payment of the above said amount, shall lapse.
- Such amount is calculated in manner to be prescribed under rule 44 of the CGST Rules.

Pay and Exit Scheme:

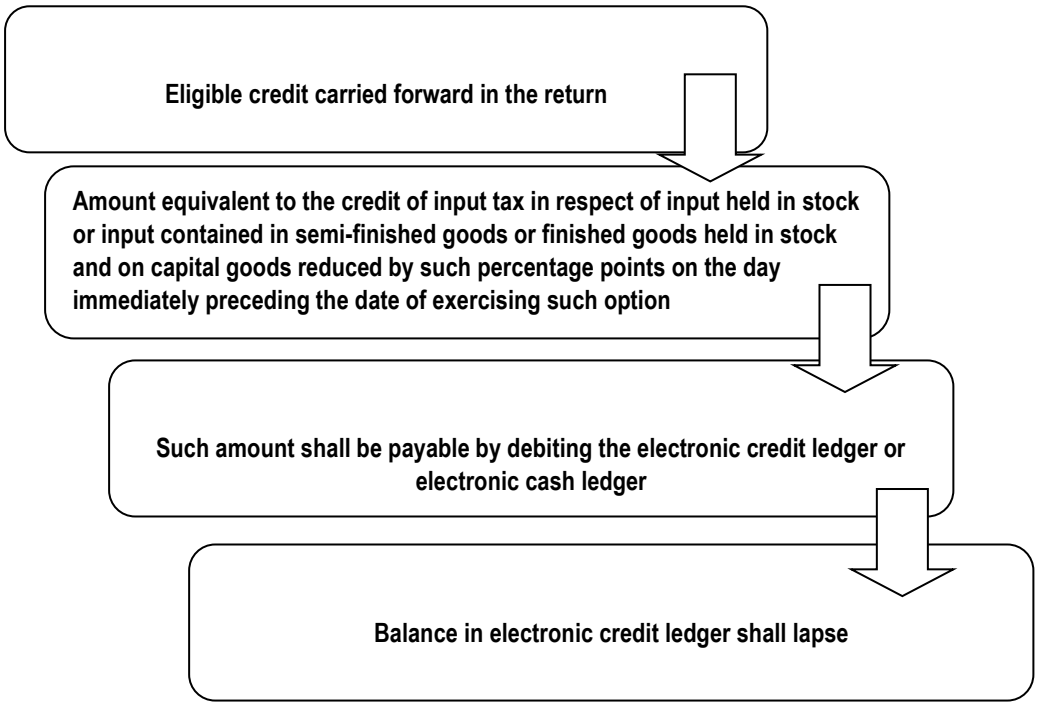


Illustration 1: Where input tax credit lapses

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		**1,12,000**
2	Date of shift to composition scheme		**01 April 2021 (Can be opted in FY beginning)**

3	Date of inward supply and use of capital goods		**02 September 2019**
4	Period of use (days)		**577**
	Period of use (months)		**19**
5	Residual life in months	B	41
	(Considering full life as 5 years)		
6	ITC attributable to residual life	C = (A*B/60)	8,200
	(To be added to the output tax liability of the registered person)		
5	Balance of ITC as on 31.03.2021		10,000
6	ITC utilized for capital goods for residual life		8,200
7	Balance ITC - would lapse		1,800

Illustration 2: Where input tax credit becomes payable

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		**1,12,000**
2	Date of shift to composition scheme		**1st April 2021**
3	Date of inward supply and use of capital goods		**2nd September 2019**
4	Period of use (days)		**577**
	Period of use (months)		**19**
5	Residual life in months	B	41
	(Considering full life as 5 years)		
6	ITC attributable to residual life	C = (A*B/60)	8,200

	(To be added to the output tax liability of the registered person)		
5	Balance of ITC as on 31.03.2021		1,500
6	ITC utilized for capital goods for residual life		8,200
7	Balance tax payable		6,700

Illustration 3: Where no payment is required

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		**1,12,000**
2	Date of shift to composition scheme		**1st April, 2023**
3	Date of inward supply and use of capital goods		**01 September 2017**
4	Period of use (months)		**67**
	Period of use (years)		**5 years 7 months**
5	Residual life in months	B	-
	(Considering full life as 5 years)		
6	ITC attributable to residual life	C = (A*B/60)	0
	(No payment required)		

Input tax credit and change in constitution of registered person: The change in constitution of registered person due to sale, merger, demerger, amalgamation, lease or transfer or change in the ownership of business including transfer of liabilities provides for the following:

(i) The registered person is allowed to transfer the input tax credit remaining unutilized in the electronic credit ledger .to such sold, merged, demerged, amalgamated, leased or transferred business.

(ii) Rule 41 prescribes such credit transfer be made on the common portal in **Form GST ITC-02** and in case of demerger, credit to be transferred must be apportioned in the ratio the value of assets of the new units as specified in demerger scheme. Value of the assets has been explained in the said rule to mean the value of the entire assets of the business whether or not input tax credit has been availed on them.

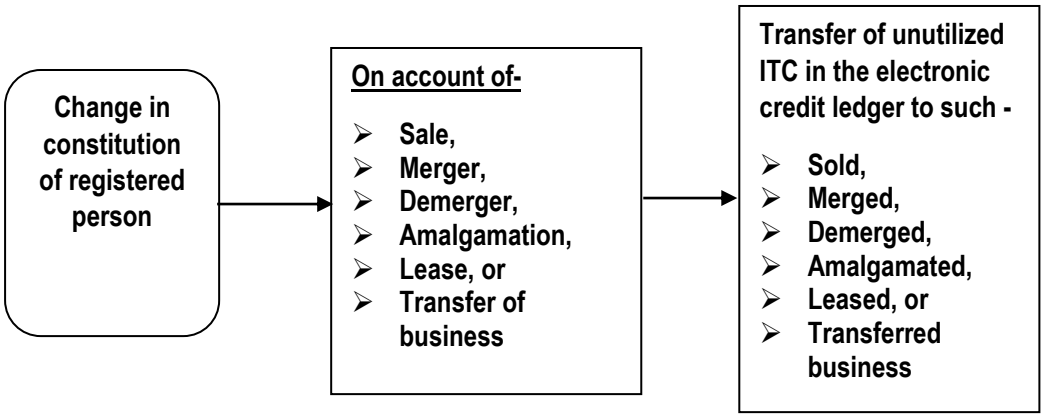
(iii) A practicing Chartered Accountant or Cost Accountant to certify that the arrangement contains a specific provision for the transfer of liabilities.

(iv) Details furnished in **Form GST ITC-02** by the transferor would have to be accepted by the transferee on the common portal. Please refer to discussion on Registrations in case of such arrangements to examine the timing of seeking registration by transferee.

(v) Transferee to duly account for the inputs and capital goods received in books of accounts.

The analysis of above provision in a pictorial form is summarised as follows:

ITC: Change in Constitution of registered Person



Transfer of credit on obtaining separate registration for multiple places of business within a State (Rule 41A): If a registered person wishes to obtain separate registration for multiple places of business in a State, the law provides the mechanism for transfer of unutilized input tax credit lying in the electronic credit ledger to any or all new registrations within 30 days from obtaining such separate registrations. For this purpose, the registered unit needs to submit **Form GST ITC-02A** on the common portal. Such **Form ITC-02A** is to be accepted by the newly registered person on the common portal. Upon such acceptance, the input tax credit is transferred to these newly registered persons.

As regards the proportion of the input tax credit to be transferred, it has been provided that the transfer of input tax credit is to be divided in the ratio of the value of assets held by these persons at the time of registration. Such value of assets is to be taken as the value of the entire assets of the business whether or not input tax credit has been availed on them.

Supply of capital goods on which input tax credit has been taken: The registered person shall pay an amount equal to the higher of:

- Input tax credit taken on such capital goods as reduced by such prescribed percentage points or
- the tax on the transaction value of such capital goods,

Note:

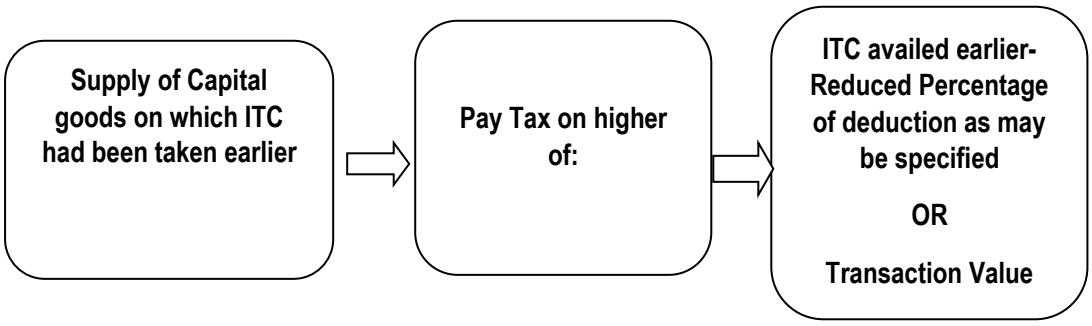
One striking difference becomes evident in Rule 40 in the manner of computation of ITC in respect of used capital goods under clause (a) of sub rule (1) and sub rule (2). While Rule (1)(a) deals with input tax credit on capital goods after reducing tax paid on such capital goods by five percentage points **per quarter of a year or part thereof**, Rule 40(2) specifies computation of input tax credit by reducing the input tax credit on capital goods at a rate of "five percentage points **for every quarter or part thereof** from the date of the issue of the invoice".

From the above we may come to the following conclusion:

- For the purpose of clause (a) of sub-rule (1), quarter shall mean a 'calendar quarter'
- For the purpose of sub-rule (2), the quarter shall be computed from the date on the invoice.

For example: Capital goods purchased on 25.03.2021 would be reduced by 5 percentage points for the quarter ending March 2021 for the purpose of clause (a) sub-rule (1) while the same assets would be reduced by 5 percentage points for the period ranging between 25.03.2021 to 24.06.2021 and so on in case of sub rule (2).

Supply of Capital goods on which ITC is already taken



Refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap: Taxable person may pay tax on transaction value under section 15.

18.3 Issue and Concern

Applicability of section 18(6) is also a concern due to the practice of adopting 'useful life' of assets (being capital goods under GST) less than 60 months. In such cases, experts are of the view that where full depreciation is claimed within, say, 36 months, it may be treated that the said capital goods have been 'written-off' (by the end of 36 months) so as to attract reversal of credit relatable to balance of 24 months (60 minus 36 months) in terms of section 17(5)(h). Whether this view is far-fetched or not, it is advisable to (a) depreciate 95% of the cost and carry 5% as long as the said capital goods remain in use or (b) report every year after 36th month that the said capital goods although fully depreciated are 'still in the use and possession' of registered person. These steps could overcome the concerns expressed.

Statutory Provisions

19. Taking input tax credit in respect of inputs and capital goods sent for job-work

(1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the "principal" shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without being first brought to his place of business.

(3) Where the inputs sent for job-work are not received back by the "principal" after completion of job-work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job-worker for job-work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the "principal" shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job-work without being first brought to his place of business.

(6) Where the capital goods sent for job-work are not received back by the "principal" within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job-worker for job-work.

Explanation. —For the purpose of this section, "principal" means the person referred to in section 143

Extract of the CGST Rules

45. Conditions and restrictions in respect of inputs and capital goods sent to the job worker.

(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker, [70][and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal]

(2) The challan issued by the principal to the job worker shall contain the details specified in rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker [71][~~or sent from one job worker to another~~] [72][during the specified period ~~during a quarter~~] shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding [73][~~the said quarter~~ the said period] [74][or within such further period as may be extended by the Commissioner by a notification in this behalf:

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

*[75]**[Explanation.** - For the purposes of this sub-rule, the expression "specified period" shall mean. -*

(a) the period of six consecutive moths commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and

(b) a financial year in any other case.]

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had

[70] *Inserted vide Notf No. 14/2018-CT dt. 23.03.2018*
[71] *Omitted vide Notf No. 74/2018-CT dt. 31.12.2018*
[72] *Substituted vide Notf No. 35/2021-CT dt. 24.09.2021 w.e.f. 01.10.2021.*
[73] *Substituted vide Notf No. 35/2021-CT dt. 24.09.2021 w.e.f. 01.10.2021.*
[74] *Inserted vide Notf No. 51/2017-CT dt. 28.10.2017*
[75] *Inserted vide Notf No. 35/2021-CT dt. 24.09.2021 w.e.f. 01.10.2021.*

been supplied by the principal to the job worker on the day when the said inputs or capital were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

***Explanation**. - For the purposes of this Chapter,-*

(1) the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;

(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-

(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and

(b) the value of security shall be taken as one per cent of the sale value of such security.

Related Provisions of the Statute:

Section or Rule	Description
Section 16	Eligibility and conditions for taking input tax credit
Section 143	Job work procedure
Rule 55	Transportation of goods without issue of invoice

19.1 Introduction

This provision relates to taking of credit of input tax on goods sent for job work.

19.2 Analysis

(i) Relevant Definitions:

- **Job work:** Any treatment or process undertaken by a person on goods belonging to another registered person (section 2(68).
- **Job worker:** A person who undertakes any treatment or process on goods belonging to another registered person.
- **Principal:** A person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

(ii) Entitlement of credit on inputs or capital goods: The principal can take credit of input tax on inputs or capital goods sent to job-worker subject to fulfilment of the following conditions and restrictions as stipulated in Section 19 and section 143 read with rule 45:

- The credit of inputs / capital goods can be taken even if inputs / capital goods were sent directly to job-worker's premises without bringing it to principal's place of business.

- In case of direct supply, the period of 1 year / 3 years shall be reckoned from the date the job worker receives such inputs/ capital goods.
- The inputs / capital goods, after completion of job-work, are to be received back by the principal within 1 year / 3 years respectively, of their being sent out.
- If the inputs / capital goods are not received back within 1 year / 3 years, it shall be deemed that such inputs / capital goods had been supplied by principal to the job worker on the day when the said inputs / capital goods were sent out.
- In case of non-receipt of the inputs / capital goods within the time prescribed, the principal shall issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year/ three years has expired.
- To issue a delivery challan for transfer of inputs/ capital goods to the job-worker including where they are sent directly (to maintain paper trail of transaction)
- The details of delivery challans for goods dispatched to job worker or received from job worker or sent from one job worker to another during a specified period shall be included in **Form GST ITC-04** to be furnished on or before 25th day of the month succeeding that that specified period, Specified period here refers to the period of six consecutive months commencing from 1st April and the 1st October in respect of the principal whose aggregate turnover in the immediately preceding financial year exceeds Rs. 5 crores. If the turnover does not exceed Rs. 5 crores, then a financial year is the specified period.
- Delivery challan shall contain details as prescribed in Rule 55 of CGST Rules. All delivery challans issued in respect of inputs sent to a job-worker and those received back are to be reported in Form GSTR-1.

Points to be considered:

- Given that *non-receipt of inputs or capital goods within a period of one year and three years respectively would be deemed to be a supply as on the date on which goods were originally dispatched to the job worker*, it is preferred that a principal raises a tax invoice and supplies the goods against such invoice at the time of original supply, if he is certain that such goods would not be received within the period specified above. However, this being uncertain, the principal has to bear the burden of interest, as interest would be calculated from the date on which the goods were originally dispatched and not from the date on which the period of one year or three years, as the case may be, expires.
- Some experts are of the view that *unless the Principal is 'registered', the activity would not be 'job-work'*. And when the supply – treatment or process – is not job-work, then it would also not be eligible to be classified under HSN 9988 in the Annexure – Scheme

of Classification of Services. Although the nature of work performed is the same whether the Principal is registered or not, the classification of supplies would need to be based on another suitable HSN code in chapter 99 because paragraph 3, Schedule II of the CGST Act (extract below) does refers to 'another person's goods' and not 'another registered person's goods'.

"3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services."

Hence, due to the registration status of the Principal, the treatment or process may or may not qualify as job-work but in either case, the work of the supplier would continue to be 'treated as supply of services' though not under HSN 9988.

- It must be noted that while *every manufacture may encompass 'process or job-work' every job-work need not necessarily result in manufacture.* It is for this reason that in the rate n *Notification No. 11/2017-CT(R), dated 28.06.2017*, manufacturing services has been separately mentioned for work carried out on *"physical inputs owned by others*".

  Treatment of process undertaken may or may not result in manufacture [section 2(72)] where processing of raw material or inputs that results in the emergence of a new product. Whether it results in manufacture or not, the treatment or process would always be 'treated as supply of services' in view of the mandate specified in entry no. 3, Schedule II of the CGST Act. Manufacture is a sub-set of job-work. And job-work will only NOT be job-work if principal is unregistered. Reference may be had to be recent changes in entry no. 26 of *Notification No. 11/2017-CT(R), dated 28.06.2017*, as follows:

Sub-entry under entry 26	Keywords from Description	Sub-entry applicable only		
		if Principal is:		If new article emerges
		Registered	Unregistered	
(i), (ia), (ib), (ic) and (id)	Services by way of job work….	✓	×	×
(ii), (iia) and (iii)	Services by way of any treatment or process ….	✓	✓	×
(iv)	Manufacturing services….	✓	✓	✓

- Now, *'goods belonging to another' does not mean 100% of the goods required in the job-work must be provided by the Principal*. It is common, and often inevitable, for the job-worker to apply his own goods. Goods required for job-work can generally identified as primary, secondary and ancillary material. If the job-worker applies ancillary material in the course of carrying out the treatment or process, the transaction does not cease to be job-work. Similarly, if the Principal provides only ancillary material, it is not justifiable to regard the transaction as job-work. Hence, a reasonable construction of the definition of paragraph 3, Schedule II requires the Principal to provide the 'primary material' at least to qualify a transaction to be termed as 'job work'. Although there are no infallible tests or undisputed guiding principle, or no one-rule can be prescribed and classification into primary-secondary-ancillary itself is a subjective matter. Reasonable construction is required based on the role, each component plays in relation to the finished product in terms of function and identity to determine 'goods belonging to another' correctly.
- Please note that *job-working must not be confused with repair or maintenance*, although both are 'treatment or process on goods belonging to another person'. Job-working creates the functionality of an article, but repair or maintenance restores or improves the functionality already created and possessed by that article or thing.
- As regards 'movement of goods' by Principal to job-worker, it is not a supply for the reason that the ingredients required to constitute supply [as detailed in the explanation of clause (a) to (c) under section 7(1)] are not satisfied. It is for this reason that *section 19(3) and 19(6) is required to 'deem' this movement of goods to be a supply* in the event of failure of job-worker to return processed goods within the permitted time (1 year for inputs and 3 years for capital goods, respectively). Further, 19(3) and 19(6) 'deem' it to be a supply not on the date of expiry of the permitted time to return them, but retrospectively on the date when the inputs / capital goods were originally sent 'for' job-work.

  Deeming fiction is capable of providing a meaning that is otherwise not available to a word or phrase. Deeming fiction is used with great caution by the lawmaker and when it is used, its construction must be with the same caution and seriousness. Hence, 'movement of goods' for the purpose of job-work is not supply but is 'deemed' to be a supply by failure of a contingency or condition-subsequent.
- As discussed earlier, loss of goods (inputs or capital goods) during the processing or manufacture of output is NOT liable to reversal of credit under section 17(5)(h). Now, when inputs have been issued to a job-worker and there is some *loss of inputs* in the hands of job worker, whether the same would also NOT be liable to reversal of credit.

  Do consider that conversion of inputs into processed output on job work basis necessarily involves normal loss. Even if, the extent of *normal loss* has been recorded

(as there is no provision in GST law to report the same prior to sending inputs to job worker), non-receipt of inputs DOES NOT amount to deemed supply under section 19(3). However, any abnormal loss in job worker's hand will not enjoy this relief but be deemed supply and attract tax in the hands of principal. Time of supply will be the date when the inputs were issued for job work and hence attract interest also. If this is known only after the limitation under Section 16(4), the ITC in the hands of the job worker may also be called into question.

- Please note the divergence in treatment of *abnormal loss* in hands of principal which is saved due to actual use albeit inefficiently by principal whereas such abnormal loss in hands of job worker is impacted by the 'deeming' fiction in section 19(3). Since divergence is not uncommon when legal fiction operates. These implications may be taken care of while complying GST law because GST is a self-assessment-based tax and taxpayer is obliged to inquire into all these aspects and report voluntarily.
- It is section 16 and not section 19 that allows input tax credit, but *section 19 permits taking of input tax credit even when the inputs (or capital goods) are not first received at the premises of the Principal but delivered directly to job-worker.* Reference may be had to the explanation to section 16(2)(b) that delivery of goods or services to any other person 'on behalf of' or 'on account of' would be sufficient compliance with this condition. This explanation is not only applicable to job-work situation but to others as well.

  Section 19 also does not deny or recover the input tax credit already availed by the Principal on the occasion of sending them to the job-worker. When movement of goods for job-work is not a supply, where is the need for a provision to permit continuation of credit that was already availed validly. Since credit has been availed, failure to use the inputs (or capital goods) as 'intended' under section 16(1) would cause a break-down of the credit scheme – to allow credit only when the said goods are subsequently supplied and are taxable. And for this reason, transfer of business assets on which credit availed is 'declared' to be supply in paragraph 1, Schedule I and diversion for non-business use (in certain cases) is 'treated' as supply in paragraph 4(a) and 4(b), Schedule II. But there is no provision to impute supply characteristics to 'movement of goods for job-work'. This responsibility is casted on section 19(3) and 19(6), respectively.
- This can be contrasted with the *'time of supply' of goods sent-on-approval under section 31(7)*. Here, the date of acceptance by customer (or end of 6th month) is recognized as supply and hence registers 'time of supply'. It is interesting to note that there is deeming fiction employed here because none is required. In other words, 'sending goods on approval' is not a supply for the same reason that the ingredients required to constitute supply (as detailed in the explanation of clause (a) to (c) under section 7(1)) are not satisfied. And such a test can validly be applied for verifying whether 'movement of goods for job-work' is supply or not. By applying the same test to

'sending goods on approval', the 'time of supply' is not the date of sending them but the date of their acceptance by customer (or end of 6th month). The time of supply in case of non-receipt of the inputs / capital goods within the time prescribed (one year/ three years) by the job-worker, the principal shall issue an invoice and time of supply for the same will be the date when the inputs/ capital goods were issued for job work.

19.3 FAQ

Q1. Whether the principal is eligible to avail input tax credit of inputs sent to job worker for job work?

Ans. Yes. The principal is eligible to avail the input tax credit on inputs sent to job worker for job work.

19.4 MCQs

Q1. The inputs sent to job work have to be received back within:

(a) 1 year

(b) 2 years

(c) 180 days

Ans. (a) 1 year.

Q2. The principal is entitled to avail the credit on capital goods sent to job worker directly:

(a) Yes

(b) No

(c) May be

Ans. (a) Yes.

Q3. If the capital goods sent to job worker has not been received within 3 years from the date of being sent:

(a) Principal has to pay amount equal to credit taken on such capital goods

(b) No need to pay amount equal to credit taken on such capital goods

(c) It shall be treated as deemed supply of capital goods to the job worker

(d) None of the above

Ans. (c) It shall be treated as deemed supply of capital goods to the job worker.

Statutory provisions

20. Manner of distribution of credit by Input Service Distributor

(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central, by way of issue of a document containing, the amount of input tax credit being distributed in such manner as may be prescribed.

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

(a) the credit can be distributed to recipients of credit against a document containing such 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 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 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 or turnover in a Union Territory 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 or turnover in a Union Territory 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 –For the purposes of this section,

(a) the "relevant period" shall be-

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

(ii) if some or all recipients of the credit do not have any turnover in their States or Union Territories 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.

(b) the expression of 'recipient of credit' means the supplier of goods or services or both having the same Permanent Account Number as that of Input Service Distributor.

(c) the term 'turnover' in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied [76][under entries 84 and entry 92A] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule

Extract of the CGST Rules

39. Procedure for distribution of input tax credit by Input Service Distributor

(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely, -

*(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR 6** in accordance with the provisions of Chapter VIII of these rules;*

(b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

(c) the input tax credit because central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);

(d) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C_1", to be calculated by applying the following formula –

$$C_1 = (t_1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t_1" is the turnover, as referred to in section 20, of person R_1 during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients

[76] *Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 - Brought into force w.e.f. 01.02.2019 for "under entry 84".*

to whom the input service is attributable in accordance with the provisions of section 20;

(e) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(f) the input tax credit on account of central tax and State tax or Union territory tax shall-

(i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;

(ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

(g) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;

(h) the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;

(i) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;

(j) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (d), and the amount so apportioned shall be-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by the amount of credit under distribution being less than the amount to be adjusted.

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later for any other reason for any of the recipients, including that it was distributed to

a wrong recipient by the Input Service Distributor, the process specified in clause (j) of sub-rule (1) shall apply, mutatis mutandis, for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (h) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.

Related Provisions of the Statute

Section or Rule	Description
Section 2(61)	Definition of 'Input Service Distributor'
Section 16	Eligibility and conditions for taking input tax credit
Section 17	Apportionment of credit and blocked credits
Rule 54	Tax invoice in special cases
Rule 65	Form and manner of submission of return by an Input Service Distributor

20.1 Introduction

This Section sets forth the way input tax credit (of services) is distributed to supplier of goods or services or both of same entity having same PAN. Procedure for distribution is given in rule 39 of the CGST Rules.

20.2 Analysis

(i) An Input Service Distributor (ISD) shall distribute the eligible ITC in accordance with rule 39 elucidated in the following paras. Both eligible and ineligible credits are to be distributed such that distributable credit is 'nil' each month. It is for the recipient-branch to disallow ineligible credits. Distribution-document must suitably indicate nature of credit distributed based on HSN, description and delivery details so that recipient-branch can demonstrate on enquiry that the conditions in section 16 and 17 are duly satisfied and credit retained by such recipient-branch is only eligible credits and not ineligible credits. Experts advise that even in the absence of express mention in rule 54, responsibilities of recipient-branch cannot be discharged without collecting information in custody of ISD, especially when they share same PAN.

(ii) ISD is an office of the supplier of goods or services or both where a document (like invoice) of services attributable to other locations are received (since they might be registered separately). Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as

services are supplied from there. Care should be taken to ensure that an inter-branch supply of services should not be misinterpreted as a distribution by ISD. Please recollect that ISD cannot be an office that does any supply of its own but must be one that merely collects invoice for services and issues prescribed document for its distribution.

(iii) ISD cannot normally be used in a situation where there is a liability to pay GST. It can only receive input tax credits on invoices related to input services and distribute such credit in the manner discussed below. An ISD cannot discharge tax liability under reverse charge. This would require obtaining another registration as a regular registered person and discharge RCM liability. Please note a later discussion that ISD is therefore required to be 'nothing more than an office that receives-distributes credit' without having any of the attributes of a 'place of business' by itself.

Examples:

Illustration: Corporate office of XYZ company Ltd., is at New Delhi, having its business locations of selling and servicing of goods at New Delhi, Chennai, Mumbai and Kolkata. For example, if the software license and maintenance is used at all the locations, invoice indicating CGST and SGST is received at Corporate Office. Since the software is used at all the four locations, the input tax credit of entire services cannot be claimed at New Delhi. The same has to be distributed to all four locations. For that reason, the Delhi Corporate office has to act as ISD to distribute the credit.

Illustration: Yoko Infotech Ltd. has its head office in Mumbai, for which it additionally has an ISD registration. The company has 12 units across India including its head office. It receives the following invoices in the name of the ISD at Mumbai, for the month of January 2021:

Invoice A: ₹ 100,000 @ **IGST** 18,000 issued by Peace Link Technologies (registered in Uttar Pradesh) for repairs executed in 3 units – **Bangalore, Kolkata, Gurgaon** (Note: Gurgaon location is not registered as it is engaged in making only exempt supplies);

Invoice B: ₹ 300,000 @ **CGST** 27,000, **SGST** 27,000 issued by M/s. Tec Force (registered in Pune) for repairs executed in 3 units – **Mumbai, Bangalore, Kolkata;**

Invoice C: ₹ 500,000 @ **IGST** 90,000 issued by M/s. Georgia Marketing (registered in Bangalore) for marketing services for the **company;**

Invoice D: ₹ 10,000 @ **CGST** 900 and **SGST**₹900 issued by M/s. Gopal Coffee works (registered in Mumbai) for supply of beverages during the month to its **Mumbai unit.**

All taxes have been considered at 18% (CGST and SGST at 9% each).

The turnover of each of the units during the year 2019-21 is: Mumbai: 1 crore; Bangalore 2 crore; Kolkata 1 crore; Gurgaon 2 crore; each of the other 8 units: 50 lakhs, resulting in the aggregate turnover of the company in the previous financial year, of 10 crores.

Distribution of credits by the ISD:

Particulars	Invoice	Bangalore	Kolkata	Mumbai	Gurgaon	8 units	Total
Invoice A							
T/o in State	***Note 1***	2 crore	1 crore	-	2 crore	-	5 crore
Pro-rata ratio		40%	20%	-	40%	-	100%
Credit	18,000	7,200	3,600	-	7,200	-	18,000
Type	IGST	IGST	IGST	-	IGST	-	
Invoice B							
T/o in State	***Note 2***	2 crore	1 crore	1 crore	-	-	4 crore
Pro-rata ratio		50%	25%	25%	-	-	100%
CGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	CGST	IGST	IGST	CGST	-	-	
SGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	SGST	IGST	IGST	SGST	-	-	
Invoice C							
T/o in State	***Note 3***	2 crore	1 crore	1 crore	2 crore	0.5 * 8 crore	10 crore
Pro-rata ratio		20%	10%	10%	20%	5% * 8 units	100%
Credit	90,000	18,000	9,000	9,000	18,000	4,500 * 8 units	90,000
Type	IGST	IGST	IGST	IGST	IGST	IGST	
Invoice D							
Attributable to	***Note 4***	-	-	*Yes*	-	-	-
Credit (ineligible)	*900*	-	-	*900*	-	-	*900*

Type	*CGST*	-	-	*CGST*	-	-	
Credit (ineligible)	*900*	-	-	*900*	-	-	*900*
Type	*SGST*	-	-	*SGST*	-	-	
Credit of CGST, SGST and IGST on invoice		**Total eligible credits distributed as CGST, SGST and IGST as applicable. (Refer Note below)**					
CGST	**27,000**	-	-	6,750	-	-	**6,750**
SGST	**27,000**	-	-	6,750	-	-	**6,750**
IGST	**108,000**	52,200	26,100	9,000	25,200	4,500 each (viz. total of 36,000)	**148,500**
TOTAL	**162,000**	52,200	26,100	22,500	25,200	36,000	**162,000**

It can be seen from the illustration that credit of CGST of ₹ 27,000 is distributed as CGST credit only to the extent of ₹ 6,750; likewise, credit of SGST of ₹ 27,000 is distributed as SGST credit only to the extent of ₹ 6,750. This is because, the intra-State service billed to the ISD is attributable to 1 unit in the same State as the ISD and 2 other units located in different State. Thus, the balance of CGST credit and SGST credit is distributed as IGST to such units. This is the reason why the credit of IGST lying with the ISD prior to distribution is only ₹ 1,08,000 while the credit of IGST that is distributed aggregates to ₹ 1,48,500.

Note 1:

- The credit of IGST should always be distributed as IGST credit to all the units to which the service is attributable, regardless of where they are located.
- The credits should be distributed only to those units to which the service is attributable. Given that the service mentioned in the case of Invoice A is attributable only to Bangalore, Kolkata and Gurgaon, the entire input tax credit applicable to the case should be distributed to the said 3 units, on a pro rata basis in the ratio of their respective 'Turnover in State' to the aggregate of the 3 'Turnover in State' (i.e., 2 Cr + 1Cr + 2 Cr). Further, no differentiation is made to whether the unit is registered or not, and therefore, credit attributable to the Gurgaon unit is distributed to that unit although it is not registered, which implies, it is a loss of credit.
- The 'turnover in State' is arrived at a value for the 'relevant period'. Since all 12 units were operational during the preceding financial year, the relevant period would be the preceding financial year.

Note 2:

- The credit of CGST and SGST should be distributed as IGST credit to all the units located outside the State in which the ISD is located, and as CGST and SGST respectively, in case of distribution of credit to a unit located in the same State as the ISD. Thus, the CGST and SGST credits are distributed as IGST credits to Bangalore and Kolkata, and as CGST and SGST respectively, to Mumbai.
- Given that the service supplied in terms of Invoice B is attributable only to Bangalore, Kolkata and Mumbai, the entire input tax credit applicable to the case should be distributed to the said 3 units, on a pro rata basis in the ratio of their respective 'Turnover in State' to the aggregate of the 3 'Turnover in State' (i.e., 2 Cr + 1Cr + 1 Cr).

Note 3:

- The credit of IGST is distributed as IGST to all the units to which the service is attributable.
- Invoice C relates to a supply of service that is attributable to all the units, and hence, the credits would be distributed on a pro-rata basis of the 'Turnover in State' of each of the units, to the aggregate of 'Turnover in State' of all the 12 units, i.e., ₹10 Cr.;
- For convenience of presentation, only one column is shown to reflect the distribution to each of the 8 units, having the same 'turnover in State', and to which the same invoice is attributable.

Note 4: Given that the services for receipt of food and beverages would not be eligible input services, the taxes relating to Invoice D should be distributed as ineligible input tax (900 + 900), and the distribution must be done separately.

Since the service is wholly attributable to the Mumbai unit, the distribution is done only to such unit.

(iv) **Distribution of credit where ISD and recipient are located in**

A. Different States: As per Rule 39(1)(e) and (f) of the CGST Rules, ISD shall distribute credit of:

- CGST as IGST;
- SGST as IGST and
- IGST as IGST

by issuing prescribed document mentioning the amount of credit distributed to recipient of credit located in different States.

B. Same State: In cases where an entity has different registration within the same State, the ISD shall distribute credit of:

- CGST as CGST
- SGST as SGST and

- IGST as IGST

by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Illustration: If the corporate office of XYZ Ltd being an ISD situated in Bangalore and also has locations at Chennai, Mumbai, Kolkata, Mysore and Belagavi. XYZ Ltd receives invoices indicating ₹ 4 lakhs of CGST and SGST each in case of one service and ₹ 7 lakhs as IGST in case of another service. It shall distribute credit of:

- CGST of ₹ 4 Lakhs as IGST
- SGST of ₹ 4 Lakhs as IGST and
- IGST of ₹ 7 Lakhs also as IGST

to its locations at Chennai, Mumbai, Kolkata and shall distribute credit of:

- CGST of ₹ 4 Lakhs as CGST
- SGST of ₹ **4** Lakhs as SGST and
- IGST of ₹ 7 Lakhs also as IGST

to its locations at Mysore and Belagavi, being another business verticals in the State of Karnataka.

under a prescribed document containing the amount of credit distributed.

(v) **Conditions to distribute credit by ISD:** The conditions to distribute the credit by ISD to supplier of goods or services or both having same PAN as that of ISD i.e., recipient of credit, are as follows:

(a) Credit to be distributed to recipient under ISD invoice contents/details of which are prescribed under Rule 54 of the CGST Rules. Such document should be issued to each of the recipient of credit

(b) Credit distributed should not exceed the credit available for distribution.

(c) Tax paid on input services used by a particular recipient (registered as supplier), is to be distributed only to that recipient.

(d) Credit of tax paid on input services used by more than one recipient shall be distributed to all of them in the ratio of turnover of the recipient in a State/ Union territory to aggregate turnover of all recipients to whom the input service is attributable and which are operational during the current year.

Note: The period to be considered for computation of aforesaid turnovers is the previous financial year of that recipient. If it does not have any turnover in the previous financial year, then previous quarter of the month to which the credit is being distributed.

(vi) For a detailed discussion on Tax invoice or Credit note or Debit note to be issued by an ISD reference may be made to Chapter 8. The said Chapter 8 clearly indicates the particulars to be included in such a document.

Illustration 1: A Ltd as an ISD has input service credit of ₹ 35 lakhs used by more than one location, to be distributed among recipient's locations X, Y and Z. The turnover of X, Y, Z in preceding financial year, is ₹ 10 crores, ₹ 15 crores and ₹ 5 crores respectively. The credit of ₹ 5 lakhs pertain to input service received only by Z. The credit attributable to X, Y, Z are as follows:

Particulars	Amount (in ₹)
Total Credit to be distributed as ISD	35 Lakhs
Credit of service used only by Z location	5 Lakhs
Credit available for distribution for all units	30 Lakhs
Credit distributable to X 10 crores / 30 crores * 30 Lakhs	10 Lakhs
Credit distributable to Y 15 crores /30 crores * 30 Lakhs	15 Lakhs
Credit distributable to Z 5 crores / 30 crores * 30 Lakhs = 5 Lakhs Credit directly attributable to Z = 5 Lakhs	10 Lakhs

Illustration 2: Distribution of input tax credit by an ISD to its units is shown as under:

M/s XYZ Ltd, having its head Office at Delhi, is registered as ISD. It has three units in different State namely 'Delhi', 'Jaipur' and 'Gujarat' which are operational in the current year. M/s XYZ Ltd furnishes the following information for the month of July 2021 and asks to distribute the credit to various units.

(i) CGST paid on services used only for Delhi Unit: ₹ 3,00,000/-

(ii) IGST, CGST and SGST paid on services used for all units: ₹ 12,00,000/-

(iii) Total Turnover of the units for the Financial Year 2020-21 are as follows:-

Unit	Turnover (₹)
Delhi	5,00,00,000
Jaipur	3,00,00,000
Gujarat	2,00,00,000
Total	10,00,00,000

Solution: Computation of Input Tax Credit distributed to various units**: -**

Particulars	Total Credit Available	Delhi	Jaipur	Gujarat
		Credit distributed to all Units		
CGST paid on services used only for Delhi Unit.	3,00,000	3,00,000	0	0
IGST, CGST and SGST paid on services used in all units- Distribution on pro rata basis to all the units which are operational in the current year (Refer Note1)	12,00,000	6,00,000	3,60,000	2,40,000
Total	**15,00,000**	**9,00,000**	**3,60,000**	**2,40,000**

Note 1: Credit distributed pro rata basis based on the turnover of all the units are as under: -

(a) Unit Delhi: (5,00,00,000/10,00,00,000)*12,00,000 = ₹ 6,00,000

(b) Unit Jaipur: (3,00,00,000/10,00,00,000)*12,00,000 = ₹ 3,60,000

(c) Unit Gujarat: (2,00,00,000/10,00,00,000)*12,00,000 = ₹ 2,40,000

Relevant period for distribution of credit:

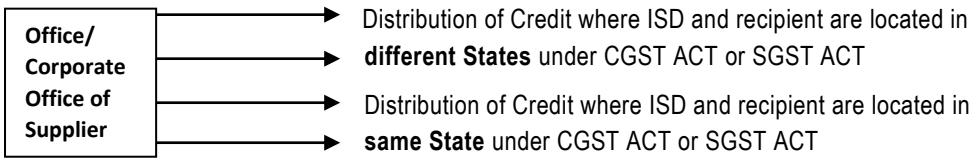
(a) If the recipient of credit has turnover in their States in preceding financial year of the year in which credit is distributed – Such financial year.

(b) If some or all recipients do not have any turnover in their States in preceding financial year of the year in which credit is distributed – 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.

The analysis of above provision in a pictorial form is summarised as follows:

Input Service Distributor – Section 20.

- ITC is distributed to supplier of goods or services or both of same entity having the same PAN as the ISD
- Common Services used at for



Input Service Distributor

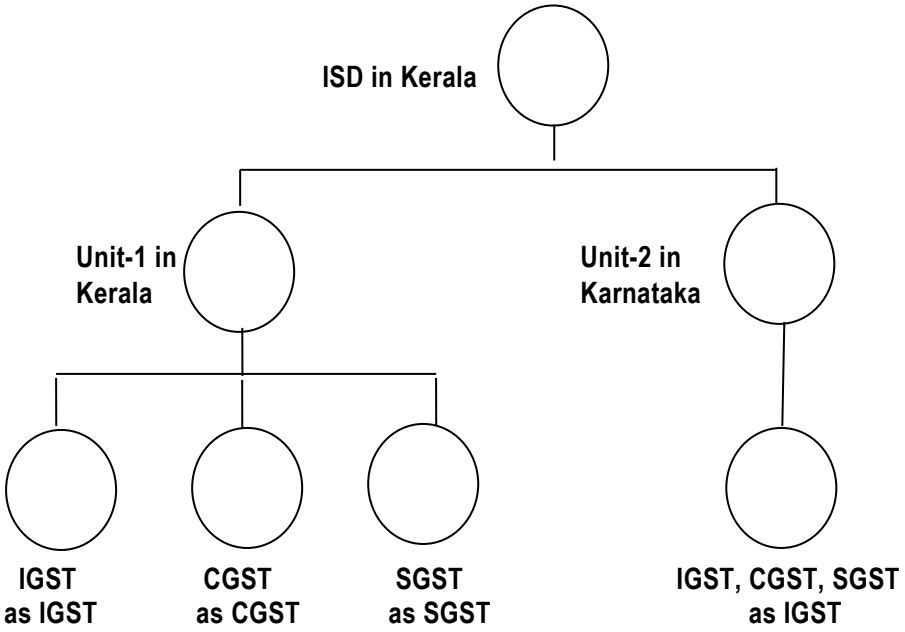


Illustration 3: Consider an example where a Company has a Branch-M in Mumbai and a Branch-D in Delhi. This Company is also incorporated in Delhi. Branch-M incurs various expenses that are supply of services in Delhi where CGST-SGST is liable to be charged in Delhi by that supplier. Obviously, credit of this tax cannot be availed by Branch-D because the underlying expense is not '*in relation to business'* of Branch-D because it is exclusively in relation to business of Branch-M. When credit cannot be claimed by Branch-D and Branch-M does not want to forego this credit, the option available is for Branch-M to obtain ISD registration in Delhi. Now, in exactly, the same manner, if Branch-D incurs expenses in Maharashtra (say in Nasik), the implications would be that credit not allowable to Branch-M for these supplies and Branch-D is eligible to obtain ISD registration in Maharashtra if credit is not to be foregone.

From this example, the following questions arise for careful consideration:

Question	Response
(i) Is ISD registration required in 'all but one' States for a registered taxable person? (All but one may all States/UT other than Home State)	Yes. If tax charged by the supplier is not IGST but CGST-SGST of the host-State where supplies are taking place, then a registered taxable person would require ISD registration in each those host-States except home-State.
(ii) Is ISD registration an entity-level office in a given State or is it a registered	Yes, ISD is an entity-level office because section 2(61) defines ISD as *".... means an*

	taxable persons-specific office in other States (outside the home State of that registered taxable person)?	*office of the supplier …. which receives tax invoice….”* It does not say it is an “office of the registered taxable person which receives tax invoice….”
(iii)	Will ISD registration be required for each registered taxable person in ‘all but one’ State? (All but one may all States/UT other than Home State)	No. One entity-level ISD registration in all States will suffice for credit distribution requirement of all registered taxable persons having same PAN
(iv)	Can an ISD distribute credit of taxes paid in that State alone (whether IGST or CGST-SGST) to registered taxable persons in all other States or only to that State for whose benefit the ISD registration was obtained?	Since ISD is an entity-level registration, one ISD in a State can distribute credit to all registered taxable persons in all other States having same PAN. Further, this ISD can also distribute credit to separately registered business verticals in that same State.
(v)	When GSTIN registration is obtained in one State, is there any need to also obtain ISD in the same State or is GSTIN and ISD registrations mutually exclusive in a given State?	Yes, ISD registration is required as GSTIN registration does not permit distribution of credit. If taxes are paid that is not related to the business of that registered taxable person in that State, then for want of ‘nexus’, credit cannot be availed by him. And to save from loss of credit, ISD registration is the only option to distribute this credit to whichever registered taxable person (called ‘recipient of credit’) satisfies this nexus test.
(vi)	Can a Company who has independent operations in all 29 States and 2 UTs and is therefore registered in all 31 locations also be required to have 31 ISD registrations?	Yes, the Company could opt to do so. This is because each registered taxable person stated to be truly independent of other business (of registered taxable persons) and receives supplies in those host-States where CGST-SGST paid in those host-States is to be distributed to the relevant home-State.
(vii)	Is it possible, when GSTIN registration is already available in any given State, for the Company to completely avoid ISD registration?	No, for the reasons stated in (vi) and (i) above, it would not be possible to avoid ISD registration.

(viii) If a Company, to avoid ISD compliances, decides to avoid ISD registration in every State where it is already having GSTIN registration?	It is possible that a Company may consider the possibility of doing so subject to loss of legitimate credits which could have been availed as an ISD.
(ix) If a Company were to instruct all registered taxable persons in a State who may have credit loss in other States misdirect the suppliers into issuing tax invoice with GSTIN of that State?	Yes, such a practice may not be uncommon in trade for a Company to misdirect a supplier to optimize credits. Care must be taken to avoid such instances however; supplier's responsibility would NOT extend to examining 'nexus' while issuing tax invoice.
(x) Is ISD registration necessary in every State where this 'nexus' test cannot be fulfilled by each registered taxable person?	Yes, as explained in (vii) above, ISD registration is necessary in every State where 'nexus' test is not fulfilled.
(xi) If multiple ISD registrations or GSTIN-plus-ISD registrations are unavoidable (as explained above), is there any solution to resolve this multiplicity of monthly and quarterly compliances?	Yes, only if link is established between the 'no nexus' supplies in a State and the registered taxable person in that same State. If no such 'nexus' exists, credit claim by registered taxable person becomes improper. If nexus is established, please examine valuation of inter-branch supply of services per proviso to Rule 28 or as per Rule 30 of the CGST Rules.

The illustrations considered in this section are matters to be considered for discussion/ deliberations only and are not views envisaged. The reader may or may not agree with the views in the discussion in this Chapter/section.

As issue arises whether Head Office (HO) can avail the input tax credit in respect of common input services procured from a third party but attributable to both HO and BOs (Branch Offices) or exclusively to one or more BOs, issue tax invoices under section 31 to the said Bos for the said input services and the BOs can then avail the ITC for the same or whether it is mandatory for the HO to follow the Input Service Distributor ('ISD') mechanism for distribution of such ITC?

Circular 199/11/2023 dated 17.07.2023 has been issued providing clarifications on the aforesaid issue i.e. taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.

For Example, A business entity which has Head Office (HO) located in State-1 and branch offices (BOs) located in other States. The HO procures some input services e.g., security

service for the entire organization from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

A) Input services procured from the third party for the entire organization by HO but attributable to both HO and BOs or exclusively to one or more BOs

HO has an option to distribute ITC in respect of such common input services by following ISD mechanism or it can issue tax invoice under section 31 of CGST Act to the concerned BOs and the BOs can then avail ITC on such common ITC subject to the provisions of section 16 and 17 of CGST Act.

However, the distribution of ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if –

- it gets itself registered mandatorily as an ISD in accordance with section 24(viii) of the CGST Act, and
- the said input services are attributable to the said BO or have actually been provided to the said BO, and

B) Whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the BOs

In respect of internally generated services provided by the HO to BOs, the value declared in the invoice by HO shall be deemed to be the open market value of such services, in terms of second proviso to rule 28 of CGST Rules, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice

C) Value of supply of internally generated services provided by HO to BOs in cases where HO is not issuing tax invoice, but full input tax credit is available to the concerned BO

In such cases, the value of services may be deemed to be declared as Nil by HO to BO and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

D) Value of internally generated services where HO is issuing tax invoice to the BOs and full input tax credit is not available to the concerned BO

In respect of internally generated services provided by the HO to BO but full ITC is not available to the BO, the cost of salary of employees of the HO, involved in providing services to BOs is not mandatorily required to be included while computing the taxable value of supply of services.

ISD is not merely a matter of compliance but involves great revenue implications to a registered taxable person. Compliance would also not be nominal.

Various FAQ on Banking, Insurance and Stock brokers Sector are issued by Government (available on cbic.gov.in) *inter alia* states that:

Sr. No.	***Question***	***Answer***
54.	*Are services supplied by a Bank to its branch / head-office outside India, which are neither intermediary services nor services to account holders, taxable under GST?*	*GST is a destination-based consumption tax. Such services provided by a Bank or the branch of a foreign Bank in India to its offshore branch / head-office, which are neither intermediary services nor services to account holders, are inter-State supply of services between distinct establishments (as per section 7(5)(a) read with Explanation to section 8 of the IGST Act, 2017), and will be taxable in India, as the location of the supplier is in India and the place of supply is outside India. Such services will not be treated as exports in view of the sub-clause (v) of section 2(6) of the IGST Act, 2017 read with Explanation 1 to section 8 of the IGST Act, 2017.*
55.	*Will the management oversight or stewardship activities performed in relation to business operations by the Head Office of a Bank to a Branch in India be considered as a supply of services by the Head Office even when there is no consideration charged by the Head Office, nor any expenditure recorded in the books of account of the Branches?*	*As per Schedule – I to the CGST Act, 2017, supply of services between distinct entities will be a taxable supply even in absence of a consideration.*
56.	*If tax is payable on provision of management oversight or stewardship services by a related person, what shall be the value of*	*As per Rule 28 of the CGST Rules, 2017, the Bank may obtain a certificate from the Branch or Office providing the estimated cost of*

	supply when no invoice is raised, no payment is made by recipient or no entry is made in the books of accounts of the recipient of service? What will be the time of supply?	*rendering the support. It may be backed by a certificate issued by a chartered accountant or cost accountant.* *In such cases, the time of supply shall be the date when such costs are determined or the certificate is received and the GST liability on the said costs shall be discharged accordingly. This can be done before the expiry of the quarter during which such supply was made as provided in 2nd proviso to Rule 47 of the CGST Rules, 2017. For this purpose a document may be issued by the entity supplying such services*

From above it can be inferred and observed that:

- HO of a bank is providing taxable service (Q 54) to its branches and by implication not ISD.
- Services provided by HO is referred (Q 55) to as 'management oversight or stewardship services' is liable to tax in terms of para 2 of schedule I. When HO of a bank is said to provide such services, HO of a company or firm or proprietary concern with more than one registration cannot be managing with anything less and operating without 'oversight' on the activities of all its distinct persons; and
- Valuation of management oversight or stewardship services (Q 56) is referred to rule 28;

However, section 20 has been substituted by *The Finance Bill, 2024* as introduced in Lok Sabha on 01.02.2024 with:

"(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.

(2) The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input

Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.

(3) The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.".

20.3 Issues and Concerns

ISD registration at a particular location cannot be a location which constitutes "fixed establishment" (FE) under section 2(50) and every FE is also a "place of business" under section 2(85) which attracts requirement of registration under section 22. As a result of this flow of implications, experts express concern that ISD and FE registrations are mutually exclusive. Now, FE is a place which is represented by *"sufficient degree of permanence in human and technical resources"*. As such, if ISD location has (i) a physical premises and (ii) permanent staff employed, such location is less likely to support ISD registration rather than regular registration of FE. Experts caution that ISD location that passes the test of FE location, may be exposed to the risk that (i) output tax may be demanded of the costs at such ISD location and (ii) branches receiving credit would be denied credit of such output tax if demand is supported under section 74 (credit previously distributed as ISD, albeit erroneously) may still be left undisturbed. However, it is also seen that there are several taxpayers holding ISD registration in States where they also have regular registration and this is the area of concern, that the ISD location would, in fact, be a FE location.

20.5 FAQs

Q1. Whether CGST and IGST credit can be distributed by ISD as IGST credit to units located in different States?

Ans. Yes. CGST credit can be distributed as IGST and IGST credit can be distributed as IGST by an ISD for the units located in different States.

Q2. Whether SGST credit can be distributed as IGST credit by an ISD to units located in different States?

Ans. Yes. ISD can distribute SGST credit as IGST for the units located in different States.

Q3. What are the conditions to be fulfilled by ISD to distribute the credit?

Ans. The conditions to be fulfilled by ISD to distribute credit are:

(a) Credit should be distributed to recipient under prescribed documents, which is issued to each of the recipient of credit.

(b) Credit distributed should not exceed the credit available for distribution.

(c) Tax paid on input services used by a particular recipient (registered as supplier), to be distributed only to that recipient .

(d) Credit of tax paid on input services used by more than one recipient shall be distributed to all of them in the ratio of turnover of the recipient in a State/ Union territory to aggregate turnover of all recipients to whom the input service is attributable, and which are operational during the current year.

Q4. What are the documents through which the credit can be distributed by ISD?

Ans. An ISD can distribute credit to its recipient units by way of an ISD invoice prescribed in Rule 54 of the CGST Rules.

Q5. How to distribute common credit among all the units of an ISD?

Ans. The common credit used by all the units can be distributed by ISD on pro rata basis i.e., based on the turnover of each unit to the aggregate turnover of all the units to which credit is distributed.

20.6 MCQs

Q1. The ISD may distribute the CGST and IGST credit to recipient outside the State as_____

(a) IGST

(b) CGST

(c) SGST

Ans. (a) IGST

Q2. The ISD may distribute the CGST credit within the State as____

(a) IGST

(b) CGST

(c) SGST

(d) Any of the above.

Ans. (b) CGST

Q3. According to the condition laid down for distribution of credit, ISD can distribute_____

(a) Credit in excess of credit available

(b) Only certain percentage of total credit available

(c) Credit equal to the total credit available for distribution.

(d) All of the above.

Ans. (c) Credit equal to the total credit available for distribution.

Q4. The credit of tax paid on input service used by more than one recipient is _____

(a) Distributed among the recipient who used such input service on pro rata basis of turnover in State of such recipient.

(b) Distributed equally among all the suppliers

(c) Distributed only to one supplier.

(d) Cannot be distributed.

Ans. (a) Distributed among the recipient who used such input service on pro rata basis of turnover in State of such recipient.

Statutory provisions

21. Manner of recovery of credit distributed in excess

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or 74, as the case may be, shall mutatis mutandis apply for determination of amount to be recovered.

Related Provisions of the Statute

Section or Rule	Description
Section 2(61)	Definition of 'Input Service Distributor'
Section 20	Manner of distribution of credit by Input Service Distributor
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts
Rule 65	Form and manner of submission of return by an Input Service Distributor

21.1 Introduction

The CGST Act clearly lays down that credit distribution is not 'to self', that is, a registered taxable person cannot distribute credit to himself. Each registered person being a distinct person under section 25, must distribute to another registered taxable person but having the same PAN to whom the credit is most accurately attributable. And the consequence of incorrect distribution, due to inadvertence or misapplication of the provisions, are discussed here.

21.2 Analysis

(i) Excess Credit distributed in contravention of provision:

Excess credit distributed to one or more recipient of credit in contravention of ISD provision under section 20 is recoverable from the recipient of such credit along with Interest. The recovery would be under the provisions of section 73 or 74.

Example-1 Total Credit Available to ISD is 15,00,000/- and the credit distributed to all the units is ₹ 16,50,000/- (i.e., Delhi 10,00,000, unit Jaipur ₹ 4,00,000 and unit Gujarat ₹ 2,50,000). What will be the consequences?

Solution: The excess credit of 1,50,000 (₹ 16,50,000- ₹ 15,00,000) distributed would be recovered from the recipient along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

Example-2 Total Credit Available to ISD is ₹ 15,00,000/- and the credit should have been distributed equal to all the units as all units had equal turnover, however credit distributed in violation of Section 21, as under:

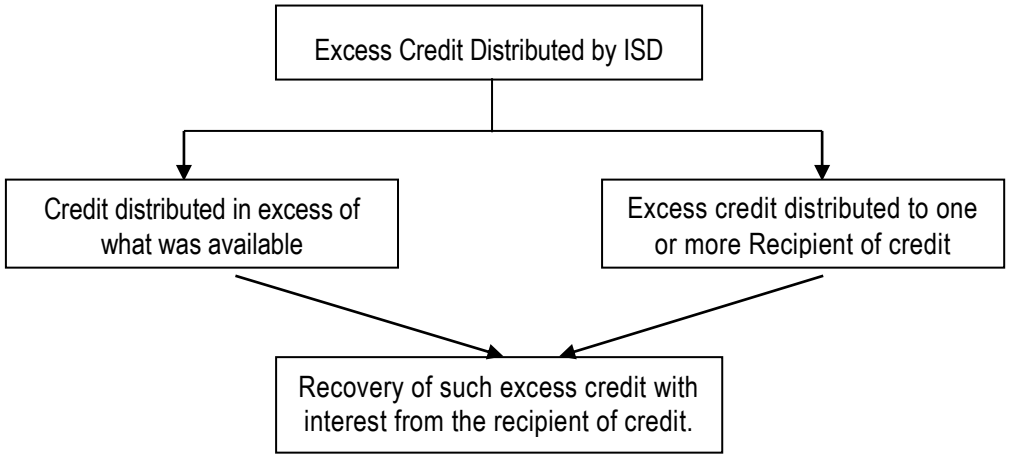
Delhi ₹ 7,00,000, Jaipur ₹ 6,00,000, Gujarat ₹ 2,00,000.

What will be the consequences?

Solution: The excess credit of ₹ 2,00,000 (₹ 7,00,000- ₹ 5,00,000) shall be recovered from Delhi and ₹ 1,00,000 (₹ 600,000 – ₹ 5,00,000) shall be recovered from Jaipur along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

The analysis of above provision in a pictorial form is summarised as follows:

Excess Credit distributed by Input Service Distributor



21.3 FAQs

Q1. Whether the excess credit distributed can be recovered by the Department?

Ans. Yes. Excess credit distributed can be recovered along with interest from recipient by the Department.

Q2. What are the consequences of credit distributed in contravention of the provision of the Act?

Ans. The credit distributed in contravention of the provision of the Act is to be recovered from the unit to which it is distributed along with interest.

Chapter 7
Registration

Sections	Rules
22. Persons liable for registration	8. Application for registration
23. Persons not liable for registration	9. Verification of the application and approval
24. Compulsory registration in certain cases	10. Issue of registration certificate
25. Procedure for registration	10A. Furnishing of Bank Account Details
26. Deemed registration	10B. Aadhar Authentication of Registered person
27. Special provisions relating to casual taxable person and non-resident taxable person	11. Separate registration for multiple places of business within a State or a Union territory
28. Amendment of registration	12. Grant of registration to persons required to deduct tax at source or to collect tax at source
29. Cancellation or suspension of registration	13. Grant of registration to non-resident taxable person
30. Revocation of cancellation of registration	14. Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India
	15. Extension in period of operation by casual taxable person and non-resident taxable person
	16. *Suo-moto* registration
	17. Assignment of Unique Identity Number to certain special entities
	18. Display of registration certificate and Goods and Services Tax Identification Number on the name board
	19. Amendment of registration
	20. Application for cancellation of registration

	21. Registration to be cancelled in certain cases 21A. Suspension of registration 22. Cancellation of registration 23. Revocation of cancellation of registration 24. Migration of persons registered under the existing law 25. Physical verification of business premises in certain cases 26. Method of authentication

Statutory Provisions

22. Persons liable for registration

(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

[1][Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified]

[2][Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation.––For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

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[1]Inserted vide The Central Goods & Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

[2]Inserted vide The Finance (No. 2) Act, 2019 w.e.f. dt. 01.01.2020 through Notf No. 01/2020-CT dt. 01.01.2020.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) 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.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, 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 or Tribunal.

Explanation. For the purposes of this section, ––

(i) *the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;*

(ii) *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 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;*

(iii) *the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution [3][except the State of Jammu & Kashmir] [4][and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand].*

Extract of the CGST Rules, 2017

18. Display of registration certificate and Goods and Services Tax Identification Number on the name board.

(1) Every registered 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 person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.*

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[3] Inserted vide The Central Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017 (No. 26 of 2017) (Corrigendum for this provision issued vide Indian Institutes of Management Act, 2017 dated 31.12.2017 - Brought into force w.e.f. 08.07.2017.

[4] Inserted vide The Central Goods & Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

Related provisions of the Statute:

Section or Rule	Description
Section 2(6)	Definition of 'Aggregate Turnover'
Section 24	Compulsory registration
Section 25	Procedure for registration

22.1 Introduction

This section provides for registration of every supplier effecting taxable supplies, subject to a threshold limit. Registration of a business with the tax authorities implies obtaining a unique identification code (i.e., GSTIN) from the concerned tax authorities so that all the operations of, and data relating to the business can be agglomerated and correlated. In any tax system, this is the most fundamental requirement for identification of the business for tax purposes and for having any compliance verification mechanism. A registration from the concerned tax authorities will confer, among others, the following advantages to the registrant:

— Legally recognised as a supplier of goods and/or services;

— Proper accounting of taxes paid on the input goods and/ or services;

— Utilisation of input taxes for payment of GST due on supply of goods and/ or services;

— Pass on the credit of the taxes paid on the goods and/ or services supplied to purchasers or recipients.

22.2 Analysis

— Every supplier shall be liable to be registered under the Act in the State from which he makes a taxable supply of goods or services or both. **It is important to note that registration is required 'in' the State 'from which' taxable supplies are made**. Registration is not required 'in' the State 'to' which taxable supplies are made, even though this is a destination-based tax. This greatly reduces the burden of the taxable person from having to seek registration in every State 'to' which taxable supplies are made. If the supplies being in the nature of Inter State Supply, which is made 'to' another State, then the nature of tax will not be CGST-SGST but IGST and is paid to the Centre who will ensure that the same reaches the appropriate 'destination' State. Therefore, for purposes of obtaining registration, it is important to identify the 'origin' of supply even though GST is a 'destination' based tax. Tax goes to the destination State, but registration is in the origin-State. Place of supply (as determined from IGST Act) provides the 'destination' and this is not relevant for registration. The location of Supplier is relevant for registration.

  The State "from" where taxable supply is made is a question of fact and that must be determined based on the requirement of law. In the case of services, location of Supplier of services is defined in section 2(71) of CGST Act but in the case of goods, location of Supplier of goods is not defined. And this is not an oversight but deliberate.

Services leave no trail as to the location 'from' where they are supplied and for that reason, a definition is required. Whereas goods leave a trail, that is, where the goods are actually 'located'. This can be seen from the definition of Place of Business [section 2(85)] of CGST Act. Place of Business is where business is 'ordinarily carried on' – this would be the location 'from' where taxable supplies are made, whether for goods or for services. But, if this is not (in case of goods), this definition goes on to include 'place where goods are stored'. Hence, location of Supplier of goods is where business is ordinarily carried on or where the goods themselves are located, if that were more accurate. *For example,* a company incorporated outside India purchases goods from a manufacturer and instructs that the goods be deposited with a warehouse-keeper in India. And then after some time, supplies the goods from the warehouse to a customer, who is also within India. For the Company though being incorporated outside India, the place where business is ordinarily carried on is not in India but the location where goods are stored being within India, attracts the requirement to register at the warehouse. Care should be taken to correctly identify where registration ought to be obtained so as not to end up with a serious misapplication of the requirements of law.

At this point, it would also be relevant to note the difference in sections 22(1) of CGST Act when compared with sections 22(1) of any State GST Act:

Section 22(1) of the CGST Act	**Section 22(1) of any SGST Act**
Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.	*Every supplier making a taxable supply of goods or services or both in the State shall be liable to be registered under this Act if his aggregate turnover in a financial year exceeds twenty lakh rupees.*

Comparison of the provisions:

Point of Difference	**CGST Act**	**SGST Acts**
Applicable to	*Every supplier*	*Every supplier*
Responsibility	*shall be liable to be registered under this Act*	*shall be liable to be registered under this Act*
Jurisdiction	*in the State or Union territory from where*	*in the State*
Exception	*other than special category States*	

Activity	*makes a taxable supply of goods or services or both*	*making a taxable supply of goods or services or both in the State*
Criteria	*if his aggregate turnover in a financial year exceeds twenty lakh rupees*	*if his aggregate turnover in a financial year exceeds twenty lakh rupees*

Given the difference in sections 22(1) of CGST and in SGST Act, one may argue that based on the provisions of SGST Act, the registration is required "in the State from where" taxable supplies are made and NOT State "where supplier is located". Care must be taken to identify the *situs* for registration carefully. Very often it is seen that 'place of supply' is interchanged with 'place of business'. It is the 'place of business' that guides *situs* and not 'place of supply'. Refer discussion in the context of section 2(85) and the illustrations provided therein.

Section 22(1) prescribes an 'exemption threshold' from obtaining registration. In other words, even if a person makes taxable supplies attracting levy of tax under section 9(1), such person will neither be required to obtain registration nor pay any GST. That is the effect of exemption threshold that will exempt payment of GST indirectly instead of an direct exemption being available under section 11. Refer discussion under section 11 for understanding operation of that exemption to supply after exemption to threshold has been exhausted.

Registration is required if the aggregate turnover in a financial year exceeds rupees twenty lakhs. This threshold limit will be rupees ten lakhs if a taxable person conducts his business in any of the special category States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution.

Effect of this 'reduced exemption threshold' on 'exemption threshold' in other non-special category States will have to be understood. And this merges from the observation that this *first proviso* to section 22(1) also appears in SGST Act. Now, it is important to understand whether this *proviso* will affect registration only of special category States or all States. Say that a person in, say, Karnataka has a branch in any of special category States, say, Mizoram, then the threshold for registration in Mizoram which is ₹.10 lakhs should not normally affect the threshold for registration in Karnataka. But existence of this proviso in Karnataka GST Act makes the threshold (for requirement to obtain registration) stand revised to Rs.10 lakhs in Karnataka too. If that were not the case, why would Karnataka GST Act have to touch upon presence of branch in Mizoram (belonging to same person). So, a person in any non-special category State must be very careful while considering 'exemption threshold' based on the presence (or absence) of branch in any special category State (liable to obtain

registration due to 'place of business' 'in' such State). Shifting of 'exemption thresholds' is discussed later.

In case of Special Category States, registration shall be required if the aggregate turnover in a financial year exceeds ₹ 10 lakhs. The Government may enhance this aggregate turnover limit at the request of a Special Category State and on the recommendations of the council from ₹ 10 lakhs to an amount not exceeding ₹ 20 lakhs.

As per explanation (iii) to section 22, the expression **"Special Category States"** shall mean the States as specified in Article 279A (4) (g) of the Constitution except the State of Jammu and Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand. [Based on Central Goods and Services Tax (Amendment) Act, 2018, notified w.e.f. 01.02.2019 vide *Notification No.02/2019 – Central Tax dated 29.01.2019*.] Accordingly, from 01.02.2019, Special Category States for the purpose of registration shall be the States of **Manipur, Mizoram, Nagaland and Tripura** only. Hence, the threshold limit of ₹ 10 lakh shall be applicable for Manipur, Mizoram, Nagaland and Tripura.

Further, in case of a person engaged exclusively in supply of goods, as per the *third proviso* to section 22(1) inserted by Finance (No. 2) Act, 2019 w.e.f. 01.01.2020, the Central Government may enhance the aggregate turnover from ₹ 20 lakh to ₹ 40 lakh, subject to certain conditions and restrictions as may be prescribed. Similar to the *second proviso*, this benefit is granted at the request of the State after the same is duly recommended by the GST Council.

Before the above insertion of third proviso, the Government as empowered under section 23(2) of the CGST Act, 2017, provided an exemption from registration w.e.f. 01.04.2019 *vide Notification No. 10/ 2019-Central Tax dated 07.03.2019*. The Notification provides that any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed 40 lakh rupees is exempted from taking registration under the said Act except if -

- they are compulsorily required to register under section 24 of the said Act;
- they are engaged in making supplies of ice-cream and other edible ice, pan masala tobacco; Fly ash bricks; Fly ash aggregates; Fly ash blocks; Bricks of fossil meals or similar siliceous earths; Building bricks; Earthen or roofing tiles**;**
- they have taken voluntary registration;
- they are engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand

Therefore, the above notification effectively increases the threshold limit for persons who are engaged in exclusive supply of goods for the purpose of GST Registration from ₹ 20 Lakhs to ₹ 40 Lakhs.

Now the moot question arises - whether the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall be included in calculating the aggregate turnover of ₹ 40 lakhs as per this Notification. In the said Notification, there is no provision allowing the supplier to also be engaged in exempt supply of services (unlike in the case of section 22(1) notified w.e.f. 01.01.2020). Hence, if such persons provide any services, then such exemption will not be applicable.

However, there is another school of thought connected to the limit of ₹ 40 Lakhs prescribed in the above referred exemption notification. Few experts are of the view that the person who is engaged in supply of goods can also engage in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discounts. This analogy is drawn on the fact that the Government has, through various Notifications[5] and Removal of Difficulty Orders[6], for the purpose of calculating the turnover for Composition Scheme and for calculation of reversal of input tax credit under rule 42 and rule 43, specifically stated to exclude such income from aggregate turnover. The proviso inserted in section 22(1) also provides such exclusion. Thus, they are of the view that the intention of the lawmakers is thus not to consider such income. However, one must exercise caution while availing exemption from registration under this Notification based on such analogy.

It is pertinent to mention that for the purpose the entire section 22(1), a person would be considered to be 'exclusively supplying goods' even if he is also engaged in exempted supply of services by way of extending deposits, loans or advances where consideration is in form of interest or discount.

Based on options exercised and corresponding State notifications, please refer table below for persons in various States/UTs and their respective 'exemption threshold' in case outwards supplies are 'exclusively goods' (subject to relaxation of interest income) and 'goods and services':

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[5] Notf No.2/2019-CT (R) dt. 07.03.2019.

[6] Central Goods and Services Tax (Removal of Difficulties) Order No. 01/2019 dated 01.02.2019.

Type of Supply	Upto 31.01.2019		W.E.F. 01.02.2019		W.E.F. 01.01.2020	
	Normal States/ UT	*Special Category State*	*Normal States/ UT*	*Special Category State (SCS)*	*Normal States/ UT*	*Special Category State*
Only Goods	20 lakhs	10 lakhs	20 lakhs	Amount not exceeding 20 lakhs, if opted by the SCS	Amount not exceeding 40 lakhs if opted by the States*	Amount not exceeding 20 lakhs, if opted by the SCS
Services/ Goods & Services	20 lakhs	10 lakhs	20 lakhs	Amount not exceeding 20 lakhs if opted by the SCS	20 lakhs	Amount not exceeding 20 lakhs if opted by the SCS

Mistake in identifying correct 'exemption threshold' or eligibility to 'enhanced exemption threshold' must be carefully considered while making a determination whether requirement to register has been triggered or not.

How Aggregate Turnover is calculated?

The expression "aggregate turnover" has been defined in section 2(6) of the CGST Act which may please be referred for the scope and coverage of the term "aggregate turnover". Aggregate Turnover is PAN based and not State/ Union Territory based.

In the below table, illustrations have been provided to understand how aggregate turnover is calculated and what will be the requirement of registration in each of these illustrations-

Illustration 1:

State	**Turnover**	**Registration Requirement (supplies Goods and Services)**
Maharashtra	15,00,000	Since the turnover of the entire entity exceeds ₹ 20,00,000 (15,00,000+7,00,000) registration will be required **in both the States**
Tamil Nadu	7,00,000	

Illustration 2:

State	Turnover	Registration Requirement (supplies Goods and Services)
Maharashtra	9,00,000	Since the entity has presence in special category State, the threshold limit is only Rs.10,00,000. Since the entity crosses such limit, registration will be required in both the States*
Manipur Tripura	2,00,000	

*Please note that the *proviso* to section 22(1) appearing in CGST Act also appears in SGST Act(s). As a result, for a taxable person in a non-Special Category State, who has a branch in Special Category State, the threshold becomes 10 lacs and not 20 lacs.

— Registration requirements under the pre-GST Laws-

Statute	Registration Requirement	Registration Level
Excise	For each factory	Unit Level
VAT	Per State (branches in the State were considered as additional places of business)	State Level
Service Tax	One centralized registration (option for de-centralized registration was also available)	National Level

— GST has adopted VAT model for registration. Hence, the supplier will be liable to obtain registration for each of the locations spread across various States/ Union territories, though he operates as a single person for the purpose of other statutes like Companies Act, 2013, Income Tax Act, 1961 etc.

— A proper reading of section 22 read with section 25 helps us to understand that a State is the smallest registrable unit in GST – and multiple places of registrations can also be taken separately in one particular State / Union Territory if the conditions specified in rule 11 are satisfied.

— For calculating the threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Further, supply of goods by a registered job worker, after completion of job work, shall be treated as the supply of goods by the "principal" referred to in section 143 (i.e., Job work procedure) of this Act. The value of such goods shall not be included in the aggregate turnover of the registered job worker.

— It is necessary to appreciate the difference between 'person' and 'taxable person'. Person is defined in section 2(84) of CGST Act to include various types of business structures and association of persons whereas taxable person is defined in section 2(107) to mean a person who is registered or is under obligation to get register under GST Law.

Exemption Limit vs. Registration Limit

In the erstwhile law, the facility of SSI/ SSP exemptions were provided wherein even though assessee has taken the registration it was not required to collect and pay tax unless they crossed the threshold limit. However, in GST regime no such exemption is provided under the law. Once registration is taken the taxpayer is mandatorily required to collect and pay tax to the Government irrespective of threshold. As per sections 2(107) of the CGST Act, 2017 *"taxable person" means a person who is registered or liable to be registered under section 22 or section 24*; this means a registered person is a taxable person. It is important to note that section 9 of CGST Act, 2017 imposes leviability to taxable person and, therefore, once registration is obtained the concept of taxable person gets triggered.

Other persons requiring registration under this provision – irrespective of threshold limit

— 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.

  Based on this provision, all the persons registered under the pre-GST law were mandatorily required to migrate to GST and then the option for cancellation of registration was provided.

— Transfer of business – Detailed below.

Transfer of Business and Registration

If a registered taxable person transfers business 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. This means that the Registration Certificate issued under sections 22 of the Act is not transferable to any other person. 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 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.

Obligations after registration

— As per rule 18, every registered 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.

— Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

22.3 Requirement of registration in respect of construction works undertaken outside the State

Works contractors, having a principal place of business in one State may undertake execution of works across India in many States. It may so happen that the contractor procures and/ or stores his goods at the site (in another state) and thereafter carries on the construction work at the site.

Now, as per section 2(85), a "place of business" is defined "*...to include any other place, where a taxable person stores his goods or receives goods or services...*" Hence, in case the taxable person stores his goods at the construction site, it will be considered as his place of business and he will be liable to take registration at the construction site.

However, in M/s T & D Electricals (GST AAR Karnataka), the Authority for Advance Ruling ruled that if a works contractor undertakes to supply his services in another state which includes complete electrical & instrumentation jobs, installation, testing and commissioning, the contractor (applicant) herein has to arrange all required tools, manpower/electrician/ technician along with all the required material. Authority ruled that applicant will get only "Temporary" small space for office and stores, therefore, there is no requirement for separate registration in the state where works contract services are to be delivered.

Similar ruling is given by Karnataka AAR in case of GEW (India) Pvt. Ltd., where applicant based in Noida (Uttar Pradesh) proposes to undertake works contract activities for L&T in Karnataka. The Authority observed that the Applicant is neither having and nor intending to have any establishment in Karnataka, hence, there is no requirement of separate registration in Karnataka.

Statutory provisions

23. Persons not liable for registration

(1) The following persons shall not be liable for registration, namely

(a) Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) [7][Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.]

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[7] Substituted for the following vide the Finance Act, 2023 w.e.f. 01.07.2017 through Notf No. 28/2023-CT dt. 31.07.2023. Applicable w.e.f. 01.10.2023.

"The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act".

Related provisions of the Statute

Section or Rule	Description
Section 2(7)	Definition of 'Agriculturist'
Section 2(47)	Definition of 'Exempt Supply'
Section 25	Procedure for 'Registration'

23.1 Analysis

Section 23 provides relaxation from the requirement of obtaining registration to following three categories of persons:

(a) Agriculturist;

(b) Persons engaged exclusively in the supply of exempted goods or services or both.

(c) Any other persons or categories of persons notified u/s 23(2)

Thus, the aforementioned persons would not be required to obtain registration even if their turnover exceeds the threshold limits (₹10 Lakhs for Special Category States and ₹ 20 Lakhs for other States). In case of persons notified by the Government based on the recommendations of the Council, such notification shall override section 22(1) or 24.

Requirement of mandatory registration waived for persons supplying goods through an ECO required to collect tax under section 52, subject to certain conditions

Exercising the power under section 23(2) of the CGST Act, 2017, with effect from 01.10.2023, the Central Government vide *Notification No. 34/2023-Central Tax dated 31.07.2023* has specified the persons making supply of goods through an electronic commerce operator (ECO), who is required to collect tax at source under section 52 of the Act and having an aggregate turnover in the preceding and current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State/Union territory, as the category of persons exempted from obtaining registration, subject to the following conditions:

a) such persons shall not make any inter-state supply of goods

b) such person shall not make supply of goods through ECO in more than one State or Union Territory

c) such persons shall be required to have PAN under Income Tax Act, 1947 and will have to declare the same on the portal along with the address of the place of business and the State or Union territory in which he seeks to make such supply, which shall be subject to validation on the common portal

d) on successful validation of the details furnished, such person will be granted an enrolment number on the portal. Such persons shall not be granted more than one enrolment number in a State or Union Territory

e) no supplies shall be made by the persons through ECO unless he has obtained the enrolment number.

f) where such persons are subsequently granted registration under section 25 of the CGST Act, the enrolment number shall cease to be valid from the effective date of registration.

Special procedure to be followed by an electronic commerce operator required to collect tax at source under section 52 in respect of supplies of goods made through it by specific unregistered persons

Vide Notification No. 37/2023-Cental Tax dated 04.08.2023, with effect from 01.10.2023, following procedure shall be followed by an electronic commerce operator who is required to collect tax at source under section 52 in respect of supply of goods made through it by a person who is exempted from taking registration under section 23(2) vide *Notification No. 34/2023-Central Tax dated the 31.07.2023* i.e., persons making supplies of goods through an electronic commerce operator who is required to collect tax at source under section 52 and having an aggregate turnover in the preceding financial year and in the current financial year below the threshold limit prescribed under section 22(1) of the CGST Act subject to certain other conditions:

(i) It shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person in accordance with the *Notification No.- 34/2023- Central Tax dated 31.07.2023*.

(ii) It shall not allow any inter-State supply of goods made through it by the said person.

(iii) It shall not collect tax at source under section 52(1) in respect of supply of goods made through it by the said person; and

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

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

Agriculturist

As per section 2(7), agriculturist means an individual or HUF who undertakes cultivation of land:

(a) By own labour, or

(b) By the labour of family, or

(c) By servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

Thus, an agriculturist is not liable for registration only to the extent of supply of produce out of cultivation of land. If an agriculturist undertakes supplies which are not linked to the cultivation of land, he will fall within the provisions of sections 22 and may have to take registration in respect of such supplies. It is important to consider the nature of activities undertaken by the agriculturist. If the process deviates from 'cultivation' it will travel outside the scope of this exclusion from registration. The exclusion states – to the extent of supply of 'produce out of cultivation' of land – any further processing of the primary produce from cultivation will continue not to avail this exclusion.

Cultivation of land does not include pisciculture on inland water body or cattle rearing that graze the produce of land. The produce that emerges from land is 'cultivation of land'. For example, harvesting paddy is cultivation but production of rice is not.

It should be noted that the exclusion from the requirement to be registered does not result in non-collection of tax on agricultural produce. Section 9(3) of the CGST Act and section 5(3) of the IGST Act notifies certain commodities (like cashew nuts) on which tax is required to be discharged under reverse charge basis by the recipient of goods when such commodities are purchased from an agriculturist. Thus, the exemption from registration is dependent on status of the supplier and not based on the commodity involved. Needless to say, if the supplier of goods is not an agriculturist, then he will have to obtain registration under the regular provisions i.e., section 22 if his aggregate turnover exceeds 'exemption threshold' and its variations (discussed earlier). Also, refer discussion under section 2(7) on the various facets of 'agriculturist' and the scope of inapplicability to exemption from registration under section 23(1)(b).

Exclusively engaged in Exempt Supplies

The term exclusive indicates engaging in only those supplies which are exempted. Therefore, if a supplier is supplying both exempted and taxable goods and/or services, then this provision is not applicable, and he is required to obtain registration under section 22.

It essentially permits any person whose 'entire' supply consists of 'exempt supplies', to be excluded from obtaining registration. Care should be taken to validate the premise of (a) entire supply and (b) it being exempt. Even if small value of supplies is taxable, then exempt supplies will be included to determine if aggregate turnover has exceeded the exemption threshold under section 22 for attracting registration.

Now, a question may arise as to whether registration is required in case a person is engaged exclusively in supplying exempted goods or services and also incurs certain expenses which are listed in section 9(3) for payment of tax on reverse charge basis. These aspects are discussed in detail in section 24.

Care must be taken to look through notifications issued under section 7(2) where Government will notify persons who are specifically granted exemption from registration, namely:

(a) Persons only engaged in making supplies of taxable goods or services or both, which are liable to GST under reverse charges, are not required to take registration - *(Notification No. 5/2017–Central Tax dated 19.06.2017).*

(b) Job-workers engaged in making inter-State supply of services to a registered person except those who are liable to be registered under section 22(1) of the CGST Act, 2017 or persons opting for voluntary registration or persons engaged in making inter-State supplies of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles (w.e.f. 14.09.2017) - *Notification No. 7/2017–Integrated Tax dated 14.09.2017 as* amended *vide Notification No. 2/2019-Integrated Tax dated 29.01.2019* w.e.f. 01.02.2019.

(c) Persons effecting inter-State supplies of taxable services – where the aggregate value of supplies on PAN-India basis does not exceed ₹ 20 Lakhs in a year (₹ 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura) (w.e.f.13.10.2017) - *Notification No. 10/2017–Integrated Tax dated 13.10.2017* as amended *vide Notification No. 3/2019-Integrated Tax dated 29.01.2019*, w.e.f. 01.02.2019. *Notification No. 3/2019* grants exemption from registration to persons making inter-State supplies of taxable services to special category States.

(d) Categories of persons effecting inter-State taxable supplies of handicraft goods – where the aggregate value of supplies on PAN-India basis does not exceed ₹ 20 Lakhs in a year (₹ 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura) - (w.e.f. 22.10.2018) - *Notification No. 3/2018–Integrated Tax dated 22.10.2018.* This notification has superseded *Notification No. 8/ 2017-Integrated Tax dated 14.09.2017*. Such persons shall be required to obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of rule 138 of the CGST Rules, 2017.

(e) Persons providing services through an e-commerce who is required to collect tax at source, provided their aggregate turnover does not exceed ₹ 20 lakh (₹ 10 lakh in special category States-Manipur, Mizoram, Nagaland and Tripura) (w.e.f. 15.11.2017). - *Notification No. 65/2017–Central Tax dated 15.11.2017 as* amended *vide Notification No. 6/2019-Central Tax dated 29.01.2019, w.e.f. 01.02.2019. Notification No. 6/2019* grants exemption to suppliers of services through an e-commerce platform obtaining compulsory registration to special category States.

(f) Categories of casual taxable persons making taxable supplies of handicraft goods- where the aggregate value of supplies on PAN-India basis does not exceed ₹ 20 Lakhs in a year (₹ 10 Lakhs for special category States-Manipur, Mizoram, Nagaland and Tripura) - (w.e.f. 23.10.2018) – *Notification No. 56/2018-Central Tax dated 23.10.2018.* This notification has superseded *Notification No. 32/ 2017-Central Tax dated 15.09.2017.*

(g) W.e.f. 01.04.2019 – the basic limit beyond which obtaining registration becomes mandatory is increased from ₹ 20 lakhs to ₹ 40 lakhs for certain categories of persons *vide notification No. 10/2019-Central Tax dated 07.03.2019* (discussed earlier).

As per the said notification, any person, who is engaged in **exclusive supply of goods** and whose aggregate turnover in the financial year does not exceed ₹ 40 lakhs, except,-

(a) persons required to take compulsory registration under section 24 of the said Act;

(b) persons engaged in making supplies of the following goods,

Sl. No.	Tariff item, sub-heading, heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan masala
3	24	All goods, i.e., Tobacco and manufactured tobacco substitutes
[8][4	6815	[9][Fly ash bricks; Fly ash aggregates; Fly ash blocks]
5	6901 00 00	Bricks of fossil meals or similar siliceous earths
6	6904 10 00	Building Bricks
7	6905 10 00	Earthen or roofing tiles]

(c) persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and

(d) persons exercising option under the provisions of sub-section (3) of section 25 [voluntary registration], or such registered persons who intend to continue with their registration under the said Act.

Relevant FAQ as per *Press Release dt. 20.07.2017* released by CBIC:

Q4. Is registration necessary if only inter-State supply of Nil-rated goods is being made?

Ans. If exclusively making supplies of Nil related goods, registration is not compulsory.

Q5. Whether franchisor company will have to take registration in each State where outlets are located?

Ans. No, a franchisor company need not take registration in a State where only its franchisee is located.

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[8]*Inserted vide Notf No. 03/2022 dt. 31.03.2022 w.e.f. 01.04.2022.*

[9]*Substituted vide Notf No. 15/2022 dt. 13.07.2022 w.e.f. 18.07.2022.*

Q10. Is a job-worker required to register?

Ans. Job-workers making taxable supplies above the threshold aggregate turnover needed to register.

Q20. I am a supplier of exempted goods based out of Delhi and procure raw material from Kerala. My supplier from Kerala insists that I have to be registered in Delhi for procurement of Inter-State goods. Is he right?

Ans. No, if you are dealing in 100% exempted supplies, you are not liable to be registered under GST. There is no requirement of registration for making Inter-State purchases.

Q21. Is GST registration mandatory for small retailers to buy from dealers/wholesalers?

Ans. There is no such requirement under GST law.

23.2 Issues and Concerns:

(a) The new 'extended exemption threshold' for registration (from 1 Apr 2019) to ₹ 40 lakhs is applicable only for those taxable persons, who are engaged in exclusive supply of goods. Therefore, in case a person is supplying goods but also earns a nominal amount of service income *(whether taxable or not)* such as commission income, then he shall be liable to obtain registration on crossing the exemption threshold of ₹ 20 lakhs and not ₹ 40 lakhs.

(b) ***Exemption to Charitable Organizations***: Pursuant to *Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017*, Government has exempted services by way of charitable activities, provided by charitable organisations registered under section 12AA/12AB of the Income Tax Act,1961 from the levy of GST. Thus, charitable organizations registered under Section 12AA/12AB of the Income Tax Act, 1961, engaged exclusively in charitable activities are exempted from obtaining registration. However, charitable organisations are compelled to register where they have receipts on account of ancillary activities like providing a premises on rent to operate ATM or a shop to supplement their income sources, charitable hospitals collecting fixed rent or revenue share from pharmacy operator inside premises or from sale of medicines in self-run pharmacy as these are not exempt activities and along with healthcare income, may be well over the exemption threshold and be liable for registration.

(c) ***Separate Registration for ISD to discharge tax on RCM basis***: Under the erstwhile Service Tax laws, an ISD was allowed to discharge tax liability under reverse charge mechanism without seeking a separate registration. However, under GST regime, the ISD can obtain a separate GSTIN other than the ISD registration for discharging such taxes. But an ISD is not one who will have any taxable outward supplies except distribution of credit. When an ISD attracts RCM or other liability of its own, then it is more likely that the ISD will become a regular taxable person because these taxable inward supplies cannot be received without creating an 'outward supply event'. This is

adding to the multiplicity of registrations and complexity in documentation and compliance and impacting the matrix of 'ease of doing business'. Co-existence of ISD along with regular registration in the same State may soon fall into disuse once trade comes to understand the dissimilarity between ISD (in service tax) and ISD (in GST). Experts hold the view that ISD (GST) can rightfully exist when the person (legal entity) DOES NOT have a regular registration at any place in the same State. There are some voices to the contrary but the two may come into harmony once the benefits of ISD registration in GST are discovered to be easily available via the regular registration (already obtained in the same State). *Circular No. 199/11/2023-GST dated 17.07.*2023 has clarified that ISD registration can co-exist with regular registration. Circular has considered an instance, where a business entity has Head Office (HO) located in State-1 and Branch Offices (BOs) located in other States and where the HO procures some input services e.g. security service, for the entire organisation, from a security agency (third party). HO also provides some other services on its own to branch offices (internally generated services). It is clarified that ISD Registration is not mandatory as of now and HO can very well "Cross Charge" an expense to the "Attributable" BO.

(d) ***Inclusion of non-operational income for threshold limit***: The inclusion of non-operational income like interest income as 'exempt supplies' for the purpose of determining the aggregate turnover for registration would bring into the focus large number of persons who are otherwise undertaking only a minimal amount of supply. In case a person is earning interest income from Fixed Deposit Receipts (FDR) of ₹ 15 Lakhs and a rental income from renting of immovable property of ₹ 6 Lakhs, he would need to take registration and collect GST on such supply of rental services. Care must be taken to identify whether such non-operational income is really NOT connected with the business of the person. For e.g., FD income of proprietor from funds (held in savings account) may be separate from the business of the proprietor. But FD of a firm from funds (held in current account) may be part of the business. Perfect demarcation is not possible and not required also, to leave room for examining based on trail of funds (source for deposit) and to support conclusions one way or other.

Statutory Provisions

24. Compulsory registration in certain cases

(1) Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, ––

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

(iv) person who are required to pay tax under sub-section (5) of section 9;

(v) non-resident taxable persons making taxable supply;

(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act; *(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;* *(viii) Input Service Distributor, whether or not separately registered under this Act;* *(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;* *(x) every electronic commerce operator [10][who is required to collect tax at source under section 52];* *(xi) 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 person; [11][****]* *[12] [(xia) every person supplying online money gaming from a place outside India to a person in India; and]* *(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.*

Related provisions of the Statute:

Section or Rule	Description
Section 2(20)	Definition of 'Casual Taxable Person'
Section 2(47)	Definition of 'Exempt Supply'
Section 9(5)	Tax on reverse charge basis to be paid by e-commerce operator
Section 22	Persons liable for registration
Section 25	Procedure for registration
Section 51	Tax Deduction at source
Section 52	Collection of tax at source

24.1 Analysis

Section 24 starts with a 'non obstante' clause which is limited to section 22(1) and NOT to section 23. It dictates that in the 'twelve' situations listed, even though 'exemption threshold' may still be available to the person, GST registration WILL BE applicable to such person.

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[10] Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, Notified through Notf No. 02/2019-CT dt. 29.01.2019. Applicable w.e.f. 01.02.2019.

[11] Omitted vide CGST (Amendment) Act, 2023 w.e.f. 01.10.2023 before it was read as, "and".

[12] Inserted by the CGST (Amendment) Act, 2023 w.e.f. 01.10.2023, notified through Notf No. 48/2023-CT dt. 29.09.2023. Applicable w.e.f. 01.10.2023.

Registration is always under section 22 and once registration is obtained, then such person will forfeit the 'exemption threshold'. Registration is 'unqualified' whether it is due to exceeding exemption threshold under section 22(1) or voluntarily registered under section 25(3) or compulsorily registered under section 24. Once registered, all supplies will be subject to tax 'as if' generally liable to be registered.

Categories of persons who shall be required to be registered under this Act irrespective of the threshold limit:

The following categories of persons are required to obtain registration compulsorily under this Act:

— Persons making any inter-State taxable supply;

— Casual taxable persons making taxable supply;

— Persons who are required to pay tax under reverse charge;

— Persons who are required to pay tax under sub-section (5) of section 9 (electronic commerce operator)

— Non-resident taxable persons making taxable supply;

— Persons who are required to deduct tax under section 51 (Tax Deduction at Source);

— Persons who supply goods or services or both on behalf of other registered taxable persons whether as an agent or otherwise;

— Input service distributor;

— Persons who supply goods and/or services, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52,

— Every electronic commerce operator who is required to collect tax at source under section 52;

— 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;

--- Every person supplying online money gaming from a place outside India to a person in India; and

— Such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

It may be noted that *vide Notification No. 10/2017–Integrated Tax dated 13.10.2017*, persons making inter-State supply of services and having turnover not exceeding Rs. 20 lakhs have been exempted *(u/s. 23 as discussed in the above paragraphs)* from obtaining registration. Accordingly, only persons who make inter-State supply of goods have to compulsorily obtain registration irrespective of the aggregate turnover. Please refer the variations in 'exemption

threshold', 'extended exemption threshold' and 'reduced exemption threshold' to special category States (and its effect in non-special category States) including deviations from 01.04.2019. Refer detailed tables discussed under section 22.

The Government has issued notifications under section 23(2) to provide exemption from registration to certain category of persons who are mentioned in the aforementioned list. Details of such exemption are provided under sections 23(2) and implications of such exemption to those persons requiring compulsory registration is tabulated below:

Category of Persons	Exemption Granted
i) Persons making any inter-State taxable supply	Inter-State supplies of taxable services *(Notification No. 10/2017–Integrated Tax dated 13.10.2017 amended vide Notification No. 3/2019-Integrated Tax dated 29.01.2019, w.e.f. 01.02.2019)* and handicraft goods except when their turnover exceeds threshold limit *(Notification No.3/2018–Integrated Tax dated 22.10.2018 which superseded Notification No. 8/ 2017-Integrated Tax dated 14.9.2017)*
ii) Casual taxable persons making taxable supply	Casual taxable persons making taxable supplies of handicraft goods if the aggregate turnover does not exceed ₹ 20 lakhs *(Notification No. 56/2018-Central Tax dated 23.10.2018 which superseded Notification No. 32/ 2017–Central Tax dated 15.9.2017)*
iii) Persons who are required to pay tax under reverse charge	'Reverse charge' is defined to include sections 9(3) and 9(4) in section 2(98). Person eligible to 'exemption threshold' under section 22(1) may forfeit benefit if even one payment made attracts RCM. Further, if a supplier is making supplies which are entirely covered under reverse charge mechanism, then he is not required to obtain registration irrespective of the turnover.
iv) Persons who are required to pay tax under sub-section (5) of section 9 (electronic commerce operator)	Experts advise that suppliers (in respect of whose turnover ECO would pay tax under 9(5)) would NOT be required to pay tax. And hence, they would NOT be required to be registered (if there were no other turnover liable to tax payment). Note also exclusion of such Suppliers under clause (ix).
v) Non-resident taxable persons	No such exemption

making taxable supply	
vi) Persons who are required to deduct tax under section 51 (Tax Deduction at Source)	Refer relaxation provided under RCM notification (entries 1 and 14 of *Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017*) who have 'nil' taxable supplies and are registered only to comply with section 51 and hence, section 24.
vii) Persons who supply goods or services or both on behalf of other registered taxable persons whether as an agent or otherwise	'Agents' will become liable to compulsory registration only if their transactions attract schedule I. (Refer *Circular No. 57/31/2018-GST dated 04.09.2018* for more insight)
viii) Input Service Distributors	Remember, ISD registration is voluntary, and it's mention in section 24 only makes 'facility' of ISD available on the condition of obtaining registration.
ix) Persons who supply goods and/or services, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52	Supplier providing services through an e-commerce operator if the aggregate turnover does not exceed ₹ 20 Lakhs *(Notification No. 65/2017–Central Tax dated 15.11.2017 amended vide Notification No. 6/2019-Central Tax dated 29.01.2019, w.e.f. 01.02.2019)*
x) Every electronic commerce operator who is required to collect tax at source under section 52	No 'exemption threshold' to ECO for own outward supplies if liable to TCS under 52.
xi) 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	Exempt from filing Annual Return and Reconciliation Statement prescribed in section 44(1) and 44(2).
xii) Such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council	Persons making supplies of goods through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with the provisions of sub-

	section (1) of section 22 of the said Act, as the category of persons exempted from obtaining registration under the said Act subject to certain conditions.

Exports as Inter-State supplies

Export of goods or services or both are treated as inter-State supplies as per section 7(5) (a) of the IGST Act. Hence, as per section 24(i) of the CGST Act, the person who is engaged in export of goods or services or both are compulsorily required to take registration irrespective of the fact that such export turnover is less than ₹ 20 Lakhs. However, by virtue of *Notification No. 10/2017-Integrated Tax* as amended by *Notification No. 3/2019-Integrated Tax dated 29.01.2019* read with section 20 of the IGST Act and section 23(2) of the CGST Act, the persons making inter-State supply of taxable services are being exempt from taking registration if the aggregate turnover computed on all India basis is less than ₹ 20 Lakhs. For example, freelance journalists, software professionals, visiting faculty to foreign universities, etc. who are engaged exclusively in supply of services though naturally work from home, need not take registration if their aggregate turnover is below the threshold limit of ₹ 20 Lakhs.

But this exemption from registration is not applicable for the persons who are engaged in export of goods and thus they are mandatorily required to take registration as per section 24(i) of the CGST Act since inception. However, such persons can export the goods or services or both, as per section 16(3) of the IGST Act, either without payment of integrated tax under LUT or Bond and can claim refund of such unutilised ITC or with payment of integrated tax and can claim refund of such Integrated tax paid.

However, in the case of export of services, when turnover is less than the threshold limit, the GST paid on inward supplies will form part of the cost of output services in case registration is not taken. It is pertinent to mention here, that taxpayer can avail the benefit of refund only if registered under GST, even if turnover is less than that of the threshold limit, except in certain cases where an unregistered person can also take refund of tax paid as prescribed in *Circular No. 188/20/2022-GST dt. 27.12.2022*. Also, the requirement to register allows opportunity for Government to examine the correctness of the claim to zero-rated exemption from tax on their turnover.

Casual Taxable Person

Traders (especially Jewellers) registered in one State carry goods to another State and upon receipt of approval from the customers, sell the goods to such customers. The issue that arises for consideration is whether such jewellers are required to register as casual taxable persons in the State of the buyer. In this context, *Circular No.10/10/2017-GST, dated 18.10.2017* has been issued to clarify that in the given case, Supplier is not able to ascertain the actual supplies beforehand and ascertainment of tax liability is a mandatory requirement for registration as a casual taxable person and hence, he is not required to get registered as a

casual taxable person. Refer detailed discussion on the concept and application of casual taxable person under section 27.

Agent

Clause (vii) of section 24 provides that an agent who makes taxable supply of goods or services on behalf of other person, is compulsorily required to obtain registration independent of the aggregate turnover threshold limit provided under section 22. The term "agent" here refers to the "agent" who supplies goods to the customers under his invoice on behalf of the principal (linked to para 3 of schedule I of the CGST Act which refers to deemed supply of goods by principal to agent where the agent undertakes to supply goods on behalf of the principal) and it does not cover within its ambit, all types of agents like those who act as intermediary. This matter has also been clarified in the *Circular No. 57/31/2018-GST dated 04.09.2018* and also *Circular No. 73/47/2018-GST, dated 05.11.2018*.

Refer detailed discussion under section 2(13) of IGST Act and under schedule I regarding extent of this fictional treatment of 'agency' in GST.

24.2 Issue and Concern:

Section 23 vs. Section 24: Section 24 overrides sections 22(1) and accordingly persons enumerated under sections 24 are required to obtain compulsory registration irrespective of whether their turnover exceeds the threshold limit specified under sections 22(1). However, section 24 does not specifically override sections 23. In case there is a conflict between sections 23 and 24, the issue is which provision will prevail. Consider a scenario where a hospital is providing health care services which are exempt from GST. The turnover of the hospital is ₹ 10 Crores. The hospital has imported certain services from outside India worth ₹ 5 Lakhs which is liable to discharge the tax liability under reverse charge mechanism. The impact of sections 22, 23 and 24 in the given case are provided below:

Provision	Impact
Section 22	Not Liable to register since they are NOT providing any taxable supply and it is a pre-requisite u/s. 22(1) to take registration in that State from where a person makes TAXABLE SUPPLY of goods or services, provided aggregate turnover exceeds₹ 20/10 lakhs.
Section 23	Not required to register since they deal exclusively in exempt supplies
Section 24	Mandates registration since liable to pay tax under reverse charge on import of services.

It is very interesting to note that when Finance Bill, 2023 came, clause 131 amended entire section 23. It is reproduced below for ease of reference:

For section 23 of the Central Goods and Services Tax Act, the following section shall be substituted and shall be deemed to have been substituted with effect from 01.07.2017, namely:-

Persons not liable for registration

Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24;-

(a) the following persons shall not be liable to registration, namely:-

(i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act, 2017;

(ii) an agriculturist, to the extent of supply of produce out of cultivation of land;

(b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act."

As per this amendment, section 23 started with non-obstante clause which was over-riding section 22(1) as well as section 24 as a result, there was a view that if a person in engaged in exclusive supply of exempted supply but he is receiving certain supplies liable to reverse charge then also he will not be liable to obtain registration due to over-riding effect of section 23 over section 24. Since both section 23 and section 24 started with non-obstante clause, one can harmoniously interpret that section 23 will have independent applicability.

However, when Finance Bill, 2023 was finally enacted, section 23 was enacted entirely different, the same is reproduced below:

Persons not liable for registration

23. (1) The following persons shall not be liable to registration, namely:-

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.

One can note that now section 23 is not starting with non-obstante clause, only sub-section 2 of section 23 is starting with "Notwithstanding" and giving exclusive authority to Government to notify categories of persons who may be exempt from obtaining registration.

In this context, it is interesting to note that section 23(2) of the CGST Act empowers the Government to issue notification exempting category of persons from obtaining registration. The Central Government has issued various notifications under the said provision to exempt persons who were otherwise required to register based on section 24.

Statutory Provisions

25. Procedure for registration

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory 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.

[13][Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory].

Explanation. - Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

[14][Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed].

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

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

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[13]Inserted vide The Central Goods & Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

[14]Substituted vide The Central Goods & Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 before it was read as "Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed."

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) 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:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

[15][(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendation of the Council, specify in the said notification:

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[15]Inserted vide The Finance (No. 2) Act, 2019 through Notf No. 01/2020-CT dt. 01.01.2020 w.e.f. 01.01.2020.

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation. —For the purposes of this section, the expression "Aadhaar number" shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016]

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) 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 which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1), —

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner,

shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

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

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

Extract of the CGST Rules, 2017

8. Application for registration

(1) *[16] [Every person who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant"), except–*

(i) a non-resident taxable person;

(ii) a person required to deduct tax at source under section 51;

(iii) a person required to collect tax at source under section 52;

(iv) a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 or a person supplying online money gaming from a place outside India to a person in India referred to in section 14A under the Integrated Goods and Services Tax Act, 2017 (13 of 2017),

shall, before applying for registration, declare his Permanent Account Number, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.]

(2) *(a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes [17][and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number].*

(b) [18][~~The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and~~

(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 Permanent Account Number, mobile number and e-mail address, a temporary 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 applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in*

[16] Substituted vide Notf No. 51/2023-CT dt. 29.09.2023 w.e.f. 01.10.2023.

[17] Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.

[18] Omitted vide Notf No. 26/2022-CT dt. 26.12.2022.

the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

[19][(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.

Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.]

[20][(4B) The Central Government may, on the recommendations of the Council, by notification specify the States or Union territories wherein the [21][proviso to] sub-rule (4A) shall not apply.]

(5) On receipt of an application under sub-rule (4) [22][or under sub-rule (4A)], 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 reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) shall be issued electronically only after the said deposit.

9. Verification of the application and approval

(1) The application shall be forwarded to the proper officer who shall examine the

[19]Substituted vide Notf No. 04/2023-CT dt. 31.03.2023, w.r.e.f. 26.12.2022.

[20]Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.

[21]Substituted for "provisions of" vide Notf No. 04/2023-CT dt. 31.03.2023 w.r.e.f. 26.12.2022.

[22]Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.

application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of [23][seven] working days from the date of submission of the application.

[24][Provided that where

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, or

[25][(aa) a person who has undergone authentication of Aadhaar Number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business, or]

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business.

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business [26][~~in the presence of the said person~~], in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit].

(2) Where the application submitted under rule 8 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 issue a notice to the applicant electronically in FORM GST REG-03 within a period of [27][seven] working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of seven working days from the date of the receipt of such notice.

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[23]*Substituted vide Notf No. 94/2020-CT dt. 22.12.2020.*

[24]*Substituted vide Notf No. 94/2020-CT dt. 22.12.2020 for the following:*

"Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases".

[25]*Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.*

[26]*Omitted vide Notf No. 38/2023-CT dt. 04.08.2023.*

[27]*Substituted vide Notf No. 94/2020-CT dt. 22.12.2020.*

[28][Provided that where-

(a) A person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number, or

[29][(aa) a person who has undergone authentication of Aadhaar Number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business, or]

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business.

the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application]

Explanation- For the purposes of this sub-rule, the expression "clarification" includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in Part A of FORM GST REG-01.

(3) 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 a period of seven working days from the date of the receipt of such clarification or information or documents.

(4) Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) or where the proper officer is not satisfied with the clarification, information or documents furnished, he [30][may], for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05.

(5) [31][If the proper officer fails to take any action, -

a. within a period of seven working days from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or

b. within a period of thirty days from the date of submission of the application in cases where a person is covered under proviso to sub-rule (1); or

c. within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

[28]Substituted vide Notf No. 94/2020-CT dt. 22.12.2020.

[29]Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.

[30]Substituted vide Notf No. 62/2020-CT dt 20.08.2020 w.e.f. 21.08.2020.

[31]Substituted vide Notf No. 94/2020-CT dt 22.12.2020..

the application for grant of registration shall be deemed to have been approved.]

10. Issue of registration certificate

(1) Subject to the provisions of sub-section (12) of section 25, where the application for grant of registration has been approved under rule 9, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number shall be assigned subject to the following characters, namely: -

(a) two characters for the State code;

(b) ten characters for the Permanent Account Number or the Tax Deduction and Collection Account Number;

(c) two characters for the entity code; and

(d) one checksum character.

(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 a period of thirty days from such date.

(3) Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration under sub-rule (1) or sub-rule (3) or sub-rule (5) of rule 9.

(4) Every certificate of registration shall be [32][duly signed or verified through electronic verification code] by the proper officer under the Act.

(5) Where the registration has been granted under sub-rule (5) of rule 9, the applicant shall be communicated the registration number, and the certificate of registration under sub-rule (1), duly signed or verified through electronic verification code, shall be made available to him on the common portal, within a period of three days after the expiry of the period specified in sub-rule (5) of rule 9.

[33][10A. Furnishing of Bank Account Details. —

After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall [34][within a period of thirty days

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[32]Substituted vide Notf No. 7/2017-CT dt.27.06.2017 for the words —'digitally signed'.

[33] Inserted vide Notf No. 31/2019-CT dt. 28.06.2019.

[34] Substituted for the following vide Notf No. 38/2023-CT dt. 04.08.2023
*"as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, *[which is in the name of the registered person and obtained on*

from the date of grant of registration, or before furnishing the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using invoice furnishing facility, whichever is earlier, furnish information with respect to details of bank account on the common portal].

[35][Provided that in case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar Number of the Proprietor].

[36][10B. Aadhaar Authentication of Registered person

The registered person, other than a person notified u/s 25(6D), who have issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in case of proprietorship firm, or of any partner in the case of a Partnership firm, or of karta in case of HUF or of the Managing Director or any Whole time director, in case of a company or of any of the Members of the Managing Committee of an AOP or BOI or a Society or of any trustee in the Board of trustees, in case of a trust and of the authorised signatory, in order to be eligible for the purposes as specified in the Table Below:

TABLE

S. No.	***Purpose***
(1)	***(2)***
1	*For filing of Application for revocation of cancellation of registration in **Form GST REG-21** under rule 23*
2	*For filing of refund application in **Form RFD-01** under rule 89*
3	*For refund under rule 96 of the integrated tax paid on Goods exported out of India.*

***Provided that** if Aadhaar Number has not been assigned to the person required to undergo authentication of the Aadhaar Number, such person shall furnish the following identification documents, namely:*

(a) her/his Aadhaar Enrolment ID slip, and

(b)

(i) Bank Passbook with photograph, or

(ii) Voter Identity Card issued by Election Commission of India, or

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PAN of the registered person], or any other information, as may be required on the common portal in order to comply with any other provision."

**Inserted vide Notf No. 35/2021-CT dt. 24.09.2021.*

[35]Inserted vide Notf No. 35/2021-CT dt. 24.09.2021.

[36]Inserted vide Notf No. 35/2021-CT dt. 24.09.2021. Applicable w.e.f. 01.01.2022 as notified vide Notf No. 38/2021-CT dt. 21.12.2021.

(iii) Passport, or

(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988).

Provided further that such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number]

11. [37]***[Separate registration for multiple places of business within a State or a Union territory***

(1) Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under sub-section (2) of section 25 shall be granted separate registration in respect of each such place of business subject to the following conditions, namely: —

(a) such person has more than one place of business as defined in clause (85) of section 2;

(b) such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;

(c) all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

Explanation. —For the purposes of clause (b), it is hereby clarified that where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section.

(2) A registered person opting to obtain separate registration for a place of business shall submit a separate application in FORM GST REG-01 in respect of such place of business.

(3) The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule].

12. Grant of registration to persons required to deduct tax at source or to collect tax at source

(1) Any person required to deduct tax in accordance with the provisions of section 51 or a person required to collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed or verified through electronic verification code, in FORM GST REG-07 for the grant of registration

[37]*Substituted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019.*

through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

[38][(1A) A person applying for registration to [39][deduct or]collect tax in accordance with the provisions of [40][section 51, or, as the case may be], section 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in PART A of the application in FORM GST REG-07 and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A].

(2) The proper officer may grant registration after due verification and issue a certificate of registration in FORM GST REG-06 within a period of three working days from the date of submission of the application.

(3) Where, [41][on a request made in writing by a person to whom a registration has been granted under subrule (2) or] upon an enquiry or pursuant to any other proceeding under the Act, 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 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in FORM GST REG-08:

Provided that the proper officer shall follow the procedure as provided in rule 22 for the cancellation of registration.

13. Grant of registration to non-resident taxable person

(1) A non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in FORM GST REG-09, at least five days prior to the commencement of business at the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that in the case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its Permanent Account Number, if available.

(2) A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under

[38]Inserted vide Notf No. 74/2018-CT dt. 31.12.2018.

[39]Inserted vide Notf No. 33/2019-CT dt. 18.07.2019.

[40] Inserted vide Notf No. 33/2019-CT dt. 18.07.2019.

[41]Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.

sub-rule (5) of rule 8 shall be issued electronically only after the said deposit in his electronic cash ledger.

(3) *The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.*

(4) *The application for registration made by a non-resident taxable person shall be [42][duly signed or verified through electronic verification code] by his authorised signatory who shall be a person resident in India having a valid Permanent Account Number.*

14. Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient [43][or to a person supplying online money gaming from a place outside India to a person in India].-

(1) *Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient [44][or any person supplying online money gaming from a place outside India to a person in India] shall electronically submit an application for registration, duly signed or verified through electronic verification code, in FORM GST REG-10, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.*

(2) *The applicant referred to in sub-rule (1) shall be granted registration, in FORM GST REG-06, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.*

16. Suo moto registration

(1) *Where, pursuant to any survey, enquiry, inspection, search or any other proceedings 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-12.*

(2) *The registration granted under sub-rule (1) shall be effective from the date of such order granting registration.*

(3) *Every person to whom a temporary registration has been granted under sub-rule (1) shall, within a period of ninety days from the date of the grant of such registration, submit an application for registration in the form and manner provided in rule 8 or rule 12:*

Provided that where the said person has filed an appeal against the grant of temporary registration, in such case, the application for registration shall be submitted within a period of thirty days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority.

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[42] *Substituted vide Notf No. 7/2017-CT dt. 27.06.2017 for the word " signed"*
[43] *Inserted vide Notf No. 51/2023 - CT dt. 29.09.2023 w.e.f. 01.10.2023.*
[44] *Inserted vide Notf No. 51/2023-CT dt. 29.09.2023 w.e.f. 01.10.2023.*

(4) The provisions of rule 9 and rule 10 relating to verification and the issue of the certificate of registration shall, mutatis mutandis, apply to an application submitted under sub-rule (3).

(5) The Goods and Services Tax Identification Number assigned, pursuant to the verification under sub-rule (4), shall be effective from the date of the order granting registration under sub-rule (1).

17. Assignment of Unique Identity Number to certain special entities

(1) Every person required to be granted a Unique Identity Number in accordance with the provisions of sub-section (9) of section 25 may submit an application electronically in FORM GST REG-13, duly signed or verified through electronic verification code, in the manner specified in rule 8 at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

[45][(1A) The Unique Identity Number granted under sub-rule (1) to a person under clause (a) of sub-section (9) of section 25 shall be applicable to the territory of India.]

(2) *The proper officer may, upon submission of an application in FORM GST REG-13 or after filling up the said form [46] [or after receiving a recommendation from the Ministry of External Affairs, Government of India], assign a Unique Identity Number to the said person and issue a certificate in FORM GST REG-06 within a period of three working days from the date of the submission of the application.*

25. Physical verification of business premises in certain cases.

[47][(1) Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

(2) Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of

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[45]Inserted vide Notf No. 75/2017-CT dt. 29.12.2017.

[46]Inserted vide Notf No. 22/2017-CT dt. 17.08.2017.

[47]Substituted vide Notf No. 38/2023-CT dt. 04.08.2023 before it was read as,

"25. [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 person is required due to failure of Aadhaar authentication 2[or due to not opting for Aadhaar authentication] before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification]."

business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal at least five working days prior to the completion of the time period specified in the said proviso.]

Related provisions of the Statute

Section or Rule	Description
Section 22	Persons liable for registration
Section 24	Compulsory registration in certain cases
Section 51	Tax deduction at source
Section 52	Collection of tax at source

25.1 Analysis

Every registered person is considered a 'distinct person' for the limited purposes of GST law. This is a very important fiction created by law so as to overcome the deficiency to constitute a 'supply' between one branch to another of the same person (legal entity). But for this fiction, imputing 'supply' in respect of supply-like transactions between branches of the same entity or person would have been impossible inspite of existence of Schedule I. In fact, the fiction of 'distinct persons' flows from section 25 into Schedule I and supports the levy of tax on branch-transfers. While branch transfer involving goods is understandable, branch transfers involving services too are taxable, but that is discussed under the concept of supply which may be referred.

Section 25 read with rules 8 to 26 of the CGST Rules related to registration provides a detailed road map on the procedural aspects of the registration. The time limit for application is within 30 days (for persons other than casual taxable person or a non-resident taxable person) and casual taxable person or a non-resident taxable person shall have to obtain the registration at least 5 days prior to the commencement.

Single registration will be granted from one State or Union Territory and in case of persons having business across different States, then multiple registrations are granted. Now, as per *CGST (Amendment) Act, 2018* with effect from 01.02.2019, even in a single State, multiple registrations are possible wherever a person has multiple places of business in the same one State.

Concept of Aadhar Authentication implemented by Finance (No. 2) Act, 2019

Concept of Aadhar Authentication at the time of seeking registration has been introduced in the GST Act by inserting sub-sections (6A) to (6D) in section 25.

1. Section 25(6A) has been introduced which mandates a registered person to undergo Aadhar authentication or furnish proof of possession of Aadhaar number and empower

the Government to make rules related to the same. Sub-rule (4A) was inserted in rule 8 w.e.f. 01.04.2020 *vide Notification No. 16/2020 - Central Tax dated 23.03.2020* in this regard. It has been substituted by *Notification No. 04/2023- Central Tax dated 31.03.2023* which provides that where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of Form GST REG-01 under sub-rule (4), whichever is earlier.

Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in Form GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.

Further, if Aadhaar number has not been assigned to such person, alternate and viable means of identification shall be provided through rules and correspondingly a proviso in rule 9(1) was inserted *vide Notification No. 16/2020 - Central Tax dated 23.03.2020* as amended *vide* Central Tax *Notification Nos. 62/2020, 94/2020 and 38/2023* which requires physical verification of principal place of business [~~in the presence of said person~~] in the following cases:

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(c) the Proper Officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

2. The Proper Officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, shall carry out physical verification of places of business and the verification report along with the other documents, including photographs, shall be uploaded in Form GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

As per the 2nd proviso in section 25(6A), if a registered person fails to undergo Aadhar authentication or furnish proof of possession of Aadhar number as per rule 8 or fails to furnish alternate and viable means of identification, then such registration shall be deemed to be invalid and other provisions of the CGST Act shall apply as if such person does not have a registration.

3. Section 25(6B) and section 25(6C) have been inserted to mandate Aadhar Authentication or furnish proof of possession of Aadhar number at the time of grant of registration to an individual and any person other than an individual. Also, if Aadhar number has not been assigned to the person, then an alternate and viable means of identification will be specified by way of a notification. *Notification No. 18/2020 - Central Tax dt. 23.03.2020* has been issued pursuant to Section 25(6B) to specify 01.04.2020 as the date from which an individual shall undergo Aadhar authentication as per rule 8 in order to be eligible for registration. Alternate and viable means of identification has been offered in the manner specified in rule 9.

4. Similarly, *Notification No. 19/2020- Central Tax dt. 23.03.2020 dt. 23.03.2020* has been issued pursuant to section 25(6C) for persons other than individuals, notifying 01.04.2020 as the date from which the authorised signatory of all type, Managing and Authorised partners in a partnership firm and Karta of an HUF shall undergo Aadhar authentication as per rule 8 in order to be eligible for grant of registration. Alternate and viable means of identification has been offered in the manner specified in rule 9.

5. Section 25(6D) empowers the Government on the recommendation of the council to specify persons or such class of persons or any State or Union territory or part thereof, on whom provisions of sub-section 6A, 6B and 6C shall not apply. *Notification no. 17/2020-Central Tax dated 23.03.2020* w.e.f. 01.04.2020 as superseded by *Notification no. 03/2021- Central Tax dated 23.02.2021*, specifies a person who is:

   (a) not a citizen of India, or

   (b) a department or establishment of Central Government or State Government, or

   (c) a local authority, or

   (d) a statutory Body, or

   (e) a Public Sector Undertaking, or

   (f) a person applying for registration under the provisions of sub-section (9) of Section 25.

   on whom provisions of sections 25(6A), 25(6B) and 25(6C) shall not apply.

Procedure in case person opts for Aadhaar Authentication

Where an applicant opts for Aadhaar authentication, while submitting the application for registration, shall undergo Aadhaar authentication and the date of submission of such application of registration shall be the date of Aadhaar authentication or fifteen days from the

date of submission of the application in Part B of Form GST REG-01 under sub-rule (4) of rule 8, whichever is earlier.

Biometric based Aadhaar Authentication:

Every application for registration made under rule 8(4) by a person, other than a person notified under section 25(6D), who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of, –

(a) In case of applicant being an Individual, of the applicant,

(b) In case of applicant not being an individual, individuals in relation to such application, as notified under section 25(6C).

Such Aadhaar authentication shall be followed by the verification of original copy of the documents uploaded with the application in Form GST REG–01 at the Facilitation Centres.

The application for registration shall be deemed to be complete only after the completion of the Aadhaar authentication and verification of original copies of documents so uploaded along with the application for registration.

The notice for defective application to be issued in Form GST REG–03, in case of persons opting for Aadhaar authentication under rule 8(4A), shall be issued **within thirty days** from the date of submission of such application.

Non-Applicability of Biometric Based Aadhaar authentication: The biometric based Aadhaar authentication as specified under proviso to rule 8(4A) shall not apply in all States and Union Territories except the State of Gujarat. [*Notification 27//2022 Central Tax dated 26.12.2022].* The applicability of this notification has now been extended to Puducherry vide *Notification No. 31/2023-CT dt. 31.07.2023* and Andhra Pradesh vide *Notification No. 54/2023- Central Tax dated 17.11.2023.*

Furnishing of Bank Account Details [Rule 10A] — After a certificate of registration has been made available on the common portal and a GSTIN has been assigned, the registered person, shall furnish information with respect to details of bank account, which is in the name of the registered person and obtained on PAN of the registered person, or any other information, as may be required on the common portal in order to comply with any other provision within earlier of 30 days from the date of grant of registration or before furnishing the details of outward supplies of goods or services or both under section 37 in Form GSTR-1 or using invoice furnishing facility. Note: In case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar Number of the Proprietor.

However, this requirement of furnishing Bank Account Details shall not be applicable to

- persons who have been granted registration under rule 12 to persons required to deduct tax at source or to collect tax at source, or
- persons who have been granted registration under rule 16 on suo-motu basis by the Proper Officer.

6. Separate registration within the State in the same line of business has been allowed by removing the concept of business vertical

The concept of business vertical has been removed from GST (Business vertical meant different lines of businesses which carry different risk and reward) *vide* CGST (Amendment) Act, 2018 by substituting section 25(2) of the CGST Act. Consequently, rule 11 of the CGST Rules was substituted through *Notification No.03/2019-Central Tax dated 29.01.2019*.

Taxpayers can now opt for separate registrations in a State voluntarily based on location for each of the business (even though they are in similar line of business)

Illustration:

Situation	Pre-Amendment	Post-Amendment
Business 1 – IT Software Services Business 2 – Employee Training Services Location – Common Office	Separate registration possible since the taxpayer has separate business vertical	Separate registration not possible since the businesses are operating from a common location
Business 1 – Hotel Business 2 – Hotel Location – Separate Locations	Separate registration not possible since the taxpayer has single business vertical	Separate registration possible since businesses are located at different locations

Further, as per *second proviso* to section 25, a Special Economic Zone unit or Special Economic Zone developer shall make a separate application for registration as distinct place of business from its other units located outside the Special Economic Zone. Rule 8 provides detailed procedure for application of registration by a person desirous of seeking registration under GST. All SEZ (developer or unit) within one State may operate with one GST registration and there is no requirement for separate registration for developer, unit or multiple units in (same or different) zones in same State.

Every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor. Regular registration DOES not permit credit-distribution. Refer discussion under section 2(61) and under section 23 (Issues and Concerns, point (c) above) regarding the scope for ISD to fall into disuse over time.

Q. Can more than one entity obtain GST registration from the same property?

Ans. Yes, if the property is clearly demarcated for specific registration, then more than one GST registration be obtained from the same property.

(Madras High Court in *M/S. BIO MED INGREDIENTS PVT. LTD*., represented by its managing director versus the Assistant Commissioner (ST) / Commercial Tax officer, State Tax officer (Adjudication), Coimbatore., Deputy Tax Officer (roving squad) Coimbatore. (*W.P. No. 28811 of 2023 and W.M.P. No. 29632 of 2023).*

Where a person who is liable to be registered under this Act fails to obtain registration, the Proper Officer can proceed to register such person in the manner as may be prescribed.

A person not liable for registration (i) may opt for voluntary registration and (ii) then will be liable to 'all' compliance 'as if' such person was liable for registration. Unlike service tax where registration could be obtained even when threshold was below ₹ 10 lakhs but tax was to be paid only after turnover crossed Rs.10 lacs. GST makes a shift in this understanding, and this must be taken note of.

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 a period of thirty days from such date. Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration.

The Registration Certificate is issued in Form GST REG-06.

The registration rules prescribe 31 different forms in respect of registration matters. The application for registration should be disposed off in a time bound manner and detailed time limits have been prescribed under the rules for various purposes.

Sl. No	Form No.	Title of the Form
1	GST REG-01	Application for registration
2	GST REG-02	Acknowledgement
3	GST REG-03	Notice for seeking additional information/ clarification/ documents relating to application for registration/ amendment/ cancellation
4	GST REG-04	Clarification/additional information/document for registration/ amendment/ cancellation
5	GST REG-05	Order of rejection of application for registration/ amendment/ cancellation
6	GST REG-06	Registration Certificate
7	GST REG-07	Application for Registration as Tax Deductor at source under section 51 or Tax Collector at source under section 52
8	GST REG-08	Order of cancellation of registration as Tax deductor at source or Tax collector at source
9	GST REG-09	Application for Registration of Non-Resident Taxable Person
10	GST REG-10	Application for registration of person supplying online

		information and data base access or retrieval services from a place outside India to a person in India, other than a registered person
11	GST REG-11	Application for extension of registration period by causal taxable person or non-resident taxable person
12	GST REG-12	Order of Grant of Temporary registration/*Suo Moto* Registration
13	GST REG-13	Application/ Form of grant of Unique Identity Number (UIN) to UN Bodies/ Embassies/ others
14	GST REG-14	Application for Amendment in Registration Particulars (For all types of registered persons)
15	GST REG-15	Order of Amendment
16	GST REG-16	Application for Cancellation of Registration
17	GST REG-17	Show Cause Notice for Cancellation of Registration
18	GST REG-18	Reply to the Show Cause Notice issued for cancellation for registration
19	GST REG-19	Order for Cancellation of Registration
20	GST REG-20	Order for dropping the proceedings for cancellation of registration
21	GST REG-21	Application for Revocation of Cancellation of Registration
22	GST REG-22	Order for revocation of cancellation of registration
23	GST REG-23	Show Cause Notice for rejection of application for revocation of cancellation of registration
24	GST REG-24	Reply to the notice for rejection of application for revocation of cancellation of registration
25	GST REG-25	Certificate of Provisional Registration
26	GST REG-26	Application for Enrolment of Existing Taxpayer
27	GST REG-27	Show Cause Notice for cancellation of provisional registration
28	GST REG-28	Order for cancellation of provisional registration
29	GST REG-29	Application for cancellation of registration of migrated taxpayers
30	GST REG-30	Form for Field Visit Report
31	GST REG-31	Intimation for Suspension and Notice for cancellation of Registration

Requirement of a Permanent Account Number or Tax Deduction and Collection Account Number

Every person who is liable to obtain registration or wants to obtain voluntary registration is required to have a Permanent Account Number (PAN).

Every person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number (TAN)

A non-resident taxable person can obtain registration on the basis of any other document as may be prescribed.

Registration for United Nations or Consulate or Embassy

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 notified by the Commissioner, shall obtain a Unique Identity Number. The registration shall be for the purpose(s) notified, including seeking to claim refund of taxes paid by them, on the notified supplies of goods and/or services received by them. The supplier supplying to these organization is expected to mention the UIN on the invoices and treat such supplies as business to business (B2B) supplies.

Grant of Registration by Proper Officer

The registration or Unique Identity Number (UIN) is granted/ issued with effective dates. The registration or UIN is granted or rejected after due verification. A certificate of registration shall also be issued in prescribed form with effective date as may be prescribed. The Unique Identity Number granted to any person shall be applicable to the territory of whole India. (Reference *Notification No. 75/2017 - Central Tax dated 29.12.2017*)

A registration or a UIN shall be deemed to have been granted, after the period prescribed under sub-section (10) of section 25 of the Act expires, if no deficiency has been communicated to the applicant within that period. Also, 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 UID has not been rejected/no deficiency has been communicated to applicant by the Proper Officer under SGST/CGST Act within the time specified. As per rule 17 of CGST Rules, the Proper Officer may upon submission of Form GST REG-13 assign UIN to these persons and issue a certificate in Form GST REG-06 within a period of 3 working days from the date of submission of application.

Physical Verification of Place of Business

Prior to amendment by *Notification 16/2020 – Central Tax dated 23.03.2020* -Where the Proper Officer is satisfied that the physical verification of the place of business of a registered person is required after the grant of registration, he may get such verification done. The verification report along with the other documents, including photographs, shall be uploaded in

Form GST REG-30 on the common portal within a period of 15 working days following the date of such verification.

After amendment by *Notification 16/2020 -Central Tax dated. 23.03.2020* - Where the Proper Officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication, or due to not opting for Aadhaar authentication before the grant of registration or a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or the Proper Officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, or due to any other reason after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in Form GST REG-30 on the common portal within a period of 15 working days following the date of such verification. The requirement of the presence of registered person at the time of physical verification of place of business for the purpose of verification of the registration application and granting of registration, has been done away with vide *Notification No. 38/2023-Central Tax dated 04.08.2023.*

To address the problem of fake registration and fake input tax credit, *Instruction No.01/2023-GST dated 04.05.2023* had been issued for concerted and coordinated action on a mission mode by Central and State tax authorities in the form of a Special All-India Drive against fake registrations. *Instruction No. 03/2023-GST dt. 14.06.2023* has been issued to provide guidelines for processing of applications for registration where unscrupulous elements are obtaining fake/ bogus registration under GST and defrauding the Government exchequer. Such fake/ non-genuine registrations are being used to fraudulently pass on input tax credit to unscrupulous recipients by issuing invoices without any underlying supply of goods or services or both. In this context, it has been further felt that verification of applications for registration by the Proper Officers is one of the most crucial steps in the direction of preventing the menace of fake or bogus registrations. Accordingly, guidelines have been issued for strengthening the process of verification of applications for registration at the end of tax officers in a uniform manner. The Principal Chief Commissioner/ Chief Commissioner of the CGST Zones are supposed to closely supervise the status of processing of the applications of registration, including physical verifications, within their zones.

Statutory Provisions

26. Deemed registration

(1) The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

(2) *Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.*

Related provisions of the Statute:

Section or Rule	Description
Section 22	Persons liable for registration
Section 25	Procedure for registration

26.1 Analysis

These are the linking provisions between the Central Goods and Services Tax and State/Union Territory Goods and Services Tax Act. By enabling these provisions, the burden of taking registrations under various Acts has been removed. Thus, if a supplier takes a registration under one Act it shall be deemed that the registration has also been obtained under the other Act and *vice-versa*. Even otherwise the registration must be taken on the common portal and is based on the PAN hence the registration will remain common across various Acts.

However, if the registration is rejected under the Central Goods and Services Tax Act, then such rejection will be treated as if the registration has not been obtained under State/Union Territory Goods and Services Tax Act.

If an application for registration has been rejected under State/Union Territory Goods and Services Tax Act, then it shall be deemed that the same has been rejected under the Central Goods and Services Tax Act.

Rejection of Application for Registration:

The Proper Officer shall not reject the application for registration or the Unique Identification Number (UIN) without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

This implies that the decision to reject an application under this section shall be only after following the principles of natural justice and after a due process of law by issuance of an order. It should also be noted that 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 respectively as the case may be.

Statutory Provisions

27. 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, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding ninety days.

(2) 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 25, 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 49.

Extract of the CGST Rules, 2017

15. Extension in period of operation by casual taxable person and non-resident taxable person

(1) Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in FORM GST REG-11 shall be submitted electronically through the common portal, either directly or through a Facilitation Centre notified by the 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 27.

Related provisions of the Statute:

Section or Rule	Description
Section 2(20)	Definition of 'Casual Taxable Person'
Section 2(77)	Definition of 'Non-Resident Taxable Person'
Section 7	Supply
Section 22	Persons liable for registration
Section 24	Compulsory registration in certain cases
Section 25	Procedure for registration

27.1 Analysis

Casual taxable person ('CTP') is defined in section 2(20) to be a 'person' and not 'registered person' who occasionally undertakes transactions involving supply, etc. This definition in CGST Act is also present in SGST/UTGST Act. So, there are 'two States' that come in for consideration, that is, one State where the said person is 'regularly' undertaking transactions involving supply and another State where the said person is 'occasionally' undertaking transactions involving supply. This two-State premise is explained by the fact that if the said person is only present in one State, then in that State whether the transactions undertaken are 'regular' or 'occasional' are not relevant because the said person cannot be denied the 'exemption threshold' (available in section 22) in that State. So, the two-State premise identifies the State where the said person is 'regularly' undertaking transactions of supply (home-State) and the other where the said is 'occasionally' undertaking transactions of supply (host-State).

Occasional Transactions:

'Occasional' means non-recurring and does not mean 'intermittent'. First-time application to register as CTP may not be questioned about the 'occasional' nature of transactions involving supply in host-State but a second-time application (after deregistration on completion of said occasional project) may not be readily accepted. Second and subsequent occasion of CTP registration may actually call for an inquiry into possibility of 'regular registration' in said host-State. So, there are multiple ways in which one could go wrong with CTP and experts caution that CTP should not be interchanged with regular registration.

Contrasted with CTP, non-resident taxable person ('NRTP') may be examined by its definition in section 2(77) which appears to be identical to the definition of CTP in section 2(20) except for:

Characteristics	CTP 2(20)	NRTP 2(77)
Occasional transactions of supply	✓	✓
Goods or services or both	✓	✓
In the course or furtherance of business	✓	-
Principal or as Agent or otherwise	✓	✓
Without a fixed place of business	In a State/UT	In India
Without a residence	-	✓

From the above comparison, the following aspects may be noted:

- CTP must have a pre-existing 'business' except that there is no POB in host-State but the question of pre-existing business is irrelevant for NRTP. But when supply in section 7(1) is attracted only when there is a 'business', whether NRTP could come within the scope of supply in the absence of a business. Answer may be found in section 7(1)(b) where 'business' is NOT a criterion to come within the definition of 'supply'. Also, please note that vide entry 10(b) to *Notification No. 9/2017- Integrated Tax (Rate) dated*

28.06.2017, 'non business purposes' have been exempted from GST. So, 'business' does become relevant factor even for NRTPs. Care must be taken to come within the IGST exemption and not presume that non-business activities by NRTPs will be exempt because this entry 10(b) found in IGST exemption is NOT available in CGST exemption notification (*Notification No.12/2017-Central Tax (Rate) dated 28.06.2017*). So, pre-existing business is relevant for CTP and NRTP but on different basis.

- CTP in one who does not have a POB in host-State but NRTP should neither have POB or Residence in the whole of India. Please take care to avoid erroneous classification of Project Offices and Branch Offices as NRTP. They do have a POB as stated in their RBI approval. So, PO and BO (of foreign companies) are NOT CTPs or NRTPs but liable to regular registration even though they may undertake only one project (esp. PO). Now, Liaison Office or Representative Office (of foreign companies) are barred from undertaking any 'business-like' activities and hence are neither CTP nor NRTP. Reference may be had to *Raj. AAR in HABUFA MEUBELEN B.V. 2018 (14) G.S.T.L. 596 (AAR)* wherein LO was held not to be liable to registration under GST. Care must be taken to investigate if LOs attract registration under section 24(iii) for making payments attracting GST on reverse charge basis.

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, extendable by Proper Officer for further period of maximum 90 days at the request of taxable person.

A casual taxable person or a non-resident taxable person, while seeking registration, shall make an advance deposit of tax in an amount equivalent to the estimated tax liability. Where any extension of time is sought, such taxable person shall deposit an additional amount of tax equal to the estimated tax liability for the period for which the extension is sought.

Such deposit shall be credited to the electronic cash ledger of casual taxable person or non-resident taxable person and utilized in the manner provided under section 49 (Payment of tax, interest, penalty and other amounts) of the Act.

Since the nature of the activity carried out by a casual taxable person and non-resident taxable person are temporary as compared to a regular taxable person, additional safeguards have been placed to ensure that the registration is granted for a limited period and the tax liability is recovered in advance.

Rule 13 of the CGST Rules, 2017 provides for the detailed process of grant of registration to non-resident taxable person and rule 15 provides for the process of extension in period of operation by casual taxable person and non-resident taxable person.

A non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in Form GST REG-09, at least five days prior to the commencement of business. In the case of business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number

or unique number on the basis of which the entity is identified by the Government of that country or it's Permanent Account Number.

A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule 5 of rule 8 shall be issued electronically only after the said deposit in his electronic cash ledger.

Rule 9 and rule 10 of the CGST Rules, 2017 shall also apply to an application submitted under this rule. The application for registration made by a non-resident taxable person shall be duly signed or verified through electronic verification code by his authorized signatory who shall be a person resident in India having a valid Permanent Account Number.

Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in Form GST REG-11shall be submitted electronically, by such person before the end of the validity of registration granted to him. Such application shall be acknowledged only on payment of the amount specified in sub-section (2) of section 27.

Circular No. 71/45/2018-GST dated 26.10.2018, clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a casual taxable person and thus, such person would be required to obtain registration as a normal taxable person. He can surrender such registration once the exhibition is over. In such cases he would not be required to pay advance tax for the purpose of registration.

Deposit of tax

For casual taxable persons, there was lack of clarity on whether the term 'tax liability' refers to output tax liability before adjustment of input tax or after adjustment of input tax. Having to make an advance deposit of tax on the output tax liability (without adjustment of input tax) would be unfair to the taxpayers and cause undue financial hardships. In this regard, *Circular No. 71/45/2018-GST dated 26.10.2018* has been issued to clarify that tax to be deposited by the casual taxable person will be "estimated net tax liability" after considering ITC available to such taxable person.

Illustration:

Casual Taxable Person (CTP) registration can be an important tool for efficacious utilisation of Input Tax Credit. If CTP registration is obtained for a State, then, a person can avail ITC for the tax charged (CGST and SGST) of that particular State.

Consider a case where Mr. A, an Event Manager, registered in New Delhi is approached by M/s Orange Mobile, registered in Madhya Pradesh, for organising an event of their new product launch in Mumbai. Event is to be organised in "Hotel Lilawati" Mumbai. Event is to be held in conference hall of the hotel, also some rooms are also booked for the stay of business associates of M/s Orange Mobile. Hotel Lilawati will charge Mr. A, a total sum of ₹ 50 Lakhs for accommodation of hotel rooms and conference hall.

It is to be noted that by virtue of section 12(3)(b) & (c) of IGST Act, place of supply by way of lodging accommodation by a hotel and by way of accommodation in any immovable property

for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property shall be the location at which the immovable property is located. Therefore, Hotel Lilawati will charge CGST and Maharashtra GST on their services. Now consider two scenarios

Scenario 1. Mr. A does not take CTP registration in Maharashtra.

In this case Mr. A being registered in New Delhi will not be able to avail ITC in respect of GST charged by Hotel Lilawati, Mumbai as the hotel will charge CGST and Maharashtra GST, this will add to cost of Mr. A.

Scenario 2. Mr. A takes CTP registration in Maharashtra.

In this case, Mr. A being 'temporarily' registered in Maharashtra can avail ITC in respect of tax charged by Hotel Lilawati. Further Mr. A can also raise tax invoice from Maharashtra registration under IGST head to M/s Orange Mobile, registered in Madhya Pradesh by virtue of section 12(2)(a) of the IGST Act.

Obtaining CTP registration in Maharashtra will be beneficial for Mr. A and it will result in seamless flow of credit, thereby reducing the cost of his services.

Statutory Provisions

28. Amendment of Registration

(1) Every registered 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 subsequent thereto, in such form and 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 such 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:

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(3) Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

Extract of the CGST Rules, 2017

19. Amendment of registration

(1) Where there is any change in any of the particulars furnished in the application for registration in FORM GST REG-01 or FORM GST REG-07 or FORM GST REG-09 or FORM GST REG-10 or for Unique Identity Number in FORM GST REG-13,either at the

time of obtaining registration or Unique Identity Number or as amended from time to time, the registered person shall, within a period of fifteen days of such change, submit an application, duly signed or verified through electronic verification code, electronically in FORM GST REG-14, along with the documents relating to such change at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that –(a) where the change relates to,-

(i) legal name of business;

(ii) address of the principal place of business or any additional place(s) of business; or

(iii) addition, deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for the day to day affairs of the business; -

which does not warrant cancellation of registration under section 29, the proper officer shall, after due verification, approve the amendment within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14 and issue an order in FORM GST REG-15 electronically and such amendment shall take effect from the date of the occurrence of the event warranting such amendment;

(b) the change relating to sub-clause (i) and sub-clause (iii) of clause (a) in any State or Union territory shall be applicable for all registrations of the registered person obtained under the provisions of this Chapter on the same Permanent Account Number;

(c) where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in FORM GST REG-14 on the common portal;

(d) where a change in the constitution of any business results in the change of the Permanent Account Number of a registered person, the said person shall apply for fresh registration in FORM GST REG-01:

Provided further that any change in the mobile number or e-mail address of the authorised signatory submitted under this rule, as amended from time to time, shall be carried out only after online verification through the common portal in the manner provided under [48][sub-rule (2) of rule 8.]

[48]*Substituted vide Notf No. 7/2017-CT dt. 27.06.2017 for the said rule. Applicable with retrospective effect from 22.06.2017.*

[49][(1A) *Notwithstanding anything contained in sub-rule (1), any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in FORM GST REG-14 on the common portal except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify.]*

(2) Where the proper officer is of the opinion that the amendment sought under sub-rule (1) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14, serve a notice in FORM GST REG-03, requiring the registered person to show cause, within a period of seven working days of the service of the said notice, as to why the application submitted under sub-rule (1) shall not be rejected.

(3) The registered person shall furnish a reply to the notice to show cause, issued under sub-rule (2), in FORM GST REG-04, within a period of seven working days from the date of the service of the said notice.

(4) Where the reply furnished under sub-rule (3) is found to be not satisfactory or where no reply is furnished in response to the notice issued under sub-rule (2) within the period prescribed in sub-rule (3), the proper officer shall reject the application submitted under sub-rule (1) and pass an order in FORM GST REG-05.

(5) If the proper officer fails to take any action: -

(a) within a period of fifteen working days from the date of submission of the application, or

(b) within a period of seven working days from the date of the receipt of the reply to the notice to show cause under sub-rule (3),

the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

Related provisions of the Statute

Section or Rule	Description
Section 22	Persons liable for registration
Section 25	Procedure for registration

[49]*Inserted vide Notf No. 75/2017-CT dt. 29.12.2017.*

28.1 Analysis

There are various situations in which the Registration Certificate issued by the competent authority requires amendment in line with real time situations. Under these circumstances, every registered taxable person shall inform any changes in the information furnished at the time of registration.

The Proper Officer shall not reject the request for amendment without affording a reasonable opportunity of being heard by following the principles of natural justice. Any rejection or, approval of amendments under the State Goods and Services Tax Act or Union Territory Goods and Services Act shall be deemed to be a rejection or approval of amendments under the Central Goods and Services Tax Act.

Rule 19 of the CGST Rules, 2017 provide for the detailed process of amendment of registration under GST.

Important Points

- Any change in registration particulars has to be informed within 15 days of change
- Proper Officer may approve/ reject amendment
- No rejection without giving an opportunity of being heard
- Rejection of amendment under CGST will be a deemed rejection under SGST and *vice-versa*

As per *Notification No. 75/2017-Central Tax dated 29.12.2017*, it may be noted that amendment in Registration Certificate (in FORM GST REG-14) will stand amended only from the date of application for amendment and not earlier than the date of submission of application except with the order of Commissioner.

Consequence of not registering Additional place of business

It is very important to apply for registration of additional place of business as per provisions of section 2(85) within 15 days from the date of change in such additional place or occupying new place of business. If an inspection or search under section 67 is conducted on place(s) of business of a taxable person and if all the place(s) of business does not find mention in GST registration certificate, then department will presume that any goods stored in such place of business and any other document or books or things are "secreted' at such place and are liable for seizure.

Statutory Provisions

29. Cancellation [50][or Suspension] of registration

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the

[50] Inserted vide The Central Goods & Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

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) [51][the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25]:

[52][Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed].

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, —

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

(b) a person paying tax under section 10 has not furnished [53][the return for a financial year beyond three months from the due date of furnishing the said return]; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for [54][such continuous tax period as may be prescribed]; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

[55][Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed].

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[51] *Substituted vide The Finance Act, 2020. Brought into force w.e.f. 01.01.2021 vide Notf No. 92/2020-CT dt. 22.12.2020.*

[52] *Inserted vide The Central Goods & Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.*

[53] *Substituted vide The Finance Act, 2022 through Notf. No.18/2022 dt. 28.09.2022 w.e.f 01.10.2022.*

[54] *Substituted vide The Finance Act, 2022 through Notf. No.18/2022 dt. 28.09.2022 w.e.f. 01.10.2022.*

[55] *Inserted vide The Central Goods & Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.*

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this 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.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic 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 or capital goods or plant and machinery 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 or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Extract of the CGST Rules, 2017

20. Application for cancellation of registration

A registered person, other than a person to whom a registration has been granted under rule 12 or a person to whom a Unique Identity Number has been granted under rule 17, seeking cancellation of his registration under sub-section (1) of section 29 shall electronically submit an application in FORM GST REG-16, including therein the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of thirty days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner.

[56]~~*[Provided that no application for the cancellation of registration shall be considered in case of a taxable person, who has registered voluntarily, before the expiry of a period of one year from the effective date of registration.]*~~

21. Registration to be cancelled in certain cases

The registration granted to a person is liable to be cancelled, if the said person, -

(a) does not conduct any business from the declared place of business; or

[57]*[(b) issues invoice or bill without supply of goods or services*[58] *[or both] in violation of the provisions of this Act, or the rules made thereunder; or*

(c) violates the provisions of section 171 of the Act or the rules made thereunder.]

[59]*[(d) violates the provision of rule 10A.]*

[60]*[(e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or*

(f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

(g) violates the provision of rule 86B]

[61]*[(h) being a registered person to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months.*

(i) being a registered person to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.]

[62]***[21A. Suspension of registration.***

(1) Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under rule 22.

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[56]*Omitted vide Notf No. 03/2018-CT dt. 23.01.2018.*
[57]*Inserted vide Notf No. 07/2017-CT dt. 27.06.2017.*
[58]*Inserted vide Notf No. 94/2020-CT dt. 22.12.2020.*
[59]*Inserted vide Notf No. 31/2019-CT dt. 28.06.2019.*
[60]*Inserted vide Notf No. 94/2020-CT dt. 22.12.2020.*
[61]*Inserted vide Notf No. 19/2022-CT dt. 28.09.2022 w.e.f. 01.10.2022.*
[62]*Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019.*

(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, [63][~~after affording the said person a reasonable opportunity of being heard~~], suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

[64][(2A) Where,-

(a) a comparison of the returns furnished by a registered person under section 39 with the details of outward supplies furnished in FORM GSTR-1 or the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1, or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or

(b) there is a contravention of the provisions of rule 10A by the registered person, the registration of such person shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences, anomalies or non-compliances and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.]

(3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2), [65][or sub-rule (2A)] shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

[66][Explanation.- For the purposes of this sub-rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice

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[63]*Inserted vide Notf No. 94/2020-CT dt. 22.12.2020.*

[64]*Substituted vide Notf No. 38/2023-CT dt. 04.08.2023 for the following:*

** [Where, a comparison of the returns furnished by a registered person under section 39 with*

(a) the details of outward supplies furnished in FORM GSTR-1; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled].

[65]*Inserted vide Notf No. 94/2020-CT dt. 22.12.2020.*

[66]*Inserted vide Notf No. 49/2019-CT dt. 09.10.2019.*

and, accordingly, not charge tax on supplies made by him during the period of suspension].

[67]*[(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.]*

(4) The suspension of registration under sub-rule (1) or sub-rule (2) [68][or sub-rule (2A)] shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.]

[69][Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.]

[70][Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.]

[71][Provided also that where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A.]

[72] *[(5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply].*

***22. Cancellation of registration**.*

(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

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[67]*Omitted vide Notf No. 94/2020-CT dt. 22.12.2020.*

[68]*Inserted vide Notf No. 94/2020-CT dt. 22.12.2020.*

[69]*Inserted vide Notf No. 94/2020-CT dt. 22.12.2020.*

[70]*Inserted vide Notf No. 14/2022-CT dt. 05.07.2022.*

[71]*Inserted vide Notf No. 38/2023-CT dt.04.08.2023.*

[72]*Inserted vide Notf No. 49/2019-CT dt. 09.10.2019.*

(2) *The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM GST REG–18 within the period specified in the said sub-rule.*

(3) *Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under [73][~~sub-rule (1) of~~] rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), [74][or under sub-rule (2A) of rule 21A] cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.*

(4) *Where the reply furnished under sub-rule (2), [75][or in response to the notice issued under sub-rule (2A) of rule 21A] is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG–20:*

[76][Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG-20.]

(5) *The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.*

Related provisions of the Statute:

Section or Rule	Description
Section 10	Composition Levy
Section 22	Persons liable for registration
Section 24	Compulsory registration in certain cases
Section 25	Procedure for registration
Rule 44	Manner of reversal of credit under special circumstances

[73]*Omitted vide Notf No. 7/2017-CT dt. 27.06.2017.*
[74]*Inserted vide Notf No. 94/2020-CT dt. 22.12.2020.*
[75]*Inserted vide Notf No. 94/2020-CT dt. 22.12.2020.*
[76]*Inserted vide Notf No. 39/2018-CT dt. 04.09.2018.*

29.1 Analysis

Any registration granted under this Act may be cancelled by the Proper Officer. The various circumstances and the provisions of the law on this subject have been outlined under this section.

A registration granted can be cancelled by the Proper Officer, either on his own or on application by the registered person when –

— the business is discontinued, transferred fully for any reason including death of proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

— there is any change in the constitution of the business; or

— the taxable person is no longer liable to be registered under sections 22 or section 24 or intends to opt out of the registration voluntarily.

Further, the Proper Officer may cancel the registration from a date, including any retrospective date, in case when –

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

— a person paying tax under Composition Scheme has not furnished the annual return for a financial year beyond three months from the due date of furnishing the said return; or

— any registered person (other than Composition taxpayer) who has not furnished returns for such prescribed continuous tax periods (Refer Rule 21); or

— any person who has taken voluntary registration and has not commenced business within six months from the date of registration; or

— where registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

This is possible only after the person is afforded an opportunity of being heard.

The CGST (Amendment) Act, 2018 with effect from 01.02.2019 provided that during the pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

As such, cancellation of registration, shall not affect the liability of the taxable person to pay tax and other dues under the Act 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. The cancellation of registration under State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a cancellation of registration under the Central Goods and Service Tax Act.

Where the registration is cancelled, the registered taxable person shall pay an amount 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 on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher. The payment can be made by way of debit in the electronic credit or electronic cash ledger.

Note: Generally, it is the input tax credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock, which will be payable because output tax payable on such goods is a future event and tax liability is to be determined on the value of goods computed in accordance with section 15, which may not necessarily be the Maximum Retail Price.

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 prescribed percentage points or the tax on the transaction value of such capital goods [under sub-section (1) of section 15 (Value of taxable supply) of Act], whichever is higher. The amount payable under these provisions shall be calculated in accordance with rule 44 of CGST Rules. The supplier who intends to cancel his registration will be required to file his Final Return in Form GSTR-10 so as to complete cancellation of registration effectively. (Reference may be made to *Notification No. 21/2018-Central Tax dated 18.04.2018*).

As per rule 20 of the CGST Rules, 2017, application for cancellation of registration by a registered person other than persons required to deduct TDS/TCS or person to whom UIN is granted needs to be made in Form GST REG-16 along with requisite details. In case of a person whose turnover does not exceed the threshold limit but has obtained registration voluntarily may also cancel registration any time during the year. This provision has been introduced *vide Notification 3/2018–Central Tax dated 23.01.2018*. Earlier, such person could not apply for cancellation before expiry of one year from the effective date of registration.

Rule 21 of the CGST Rules, 2017, provides for cases of cancellation of registration and includes the following:

a. does not conduct any business from the declared place of business, or

b. issues invoice or bill without supply of goods or services or both in violation of the provisions of Act or Rules made thereunder,

c. violates the provisions of section 171 of the Act relating to Anti–Profiteering Measures or the rules made thereunder,

d. violates the provisions of Rule 10A relating to furnishing of Bank Accounts,

e. avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or

f. furnishes the details of outward supplies in Form GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

g. violates the provision of rule 86B relating to restrictions on use of amount available in electronic credit ledger.

h. Non-filing of returns by registered persons (Including persons opting for QRMP Scheme for prescribed number of tax periods – Refer Below)

Note: As per rule 21, GST registration can be cancelled if a person issues invoice or bill without supply of goods or services or both however, rule 21 does not include a condition where a person supplies goods or services or both without issuing invoice or bill.

Reasons for Cancellation

- Transfer of business or discontinuation of business
- Change in the constitution of business. (Partnership Firm may be changed to Sole Proprietorship due to death of one of the two partners, leading to change in PAN)
- Persons no longer liable to be registered under sections 22 or 24 or intend to opt out of voluntary registration.
- Where registered taxable person has contravened provisions of the Act as may be prescribed.
- A composition supplier has not furnished return for a Financial Year beyond 3 months from the due date of furnishing such return/ any other registered person has not furnished returns for such prescribed number of tax periods.

  (Prescribed number of Tax periods – In case of a registered person

  (a) Other than persons paying tax under QRMP Scheme notified under proviso to 39(1), failure to furnish return for a continuous period of six months

  (b) Persons paying tax under QRMP Scheme notified under proviso to 39(1), failure to furnish return for a continuous period of two tax periods.)

- Non-commencement of business within 6 months from date of registration by a person who has registered voluntarily.
- Where registration has been obtained by means of fraud, willful misstatement or suppression of facts, the registration may be cancelled with retrospective effect.

Rule 21A of the CGST Rules, 2017, provides for suspension of registration in the following manner-

- Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under rule 22.

- Where the Proper Officer has reasons to believe that the registration of a person is liable to be cancelled, he may, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

Suspension based on Technical Analysis:

- Sub-rule (2A) of rule 21A, provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies/ anomalies which indicate violation of the provisions of Act and rules made thereunder and that continuation of such registration poses immediate threat to revenue. Such action may be taken as a result of
    - Comparison of the returns furnished by a registered person under section 39 with the details of outward supplies furnished in Form GSTR-1 or
    - Analysis of the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their Form GSTR-1, or
    - Contravention of provisions of rule 10A i.e., where the registered fails to furnish the bank account details within the prescribed time.
    - such other analysis, as may be carried out on the recommendations of the Council,
- In case of observance of significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in Form GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.
- **Deemed Revocation:** Where registration is suspended under rule 21A(2A) due to contravention of provisions of section 29(2)(b) or 29(2)(c) (i.e., provisions relating to non-filing of returns for such continuous number of tax periods as prescribed under rule 21) and the registration has not already been cancelled by the Proper Officer, such suspension shall be deemed to be revoked upon furnishing of all the pending returns.
- As per *Circular 145/01/2021 GST dated 11.02.2021*, it was clarified that till the time functionality for FORM REG-31 is made available on the GST portal, such notice/ intimation shall be made available to the taxpayer on their dashboard on common portal in Form GST REG-17. The taxpayers will be able to view the notice in the "View/Notice and Order" tab post login.

Effect of Suspension of Registration

- A registered person, whose registration has been suspended, *shall not make any taxable supply* during the period of suspension and shall not be required to furnish any return under section 39. It is clarified that the meaning of the term *shall not make any taxable supply* shall be that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.
- A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.

Revocation of Suspension of Registration

The suspension of registration shall be deemed to be revoked upon completion of the proceedings by the Proper Officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.

It is to be noted that suspension of registration as above may be revoked by the Proper Officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Cancellation of Registration

The registration of a taxpayer is cancelled only upon passing of the cancellation order by the Jurisdictional Officer. In order to ensure that the taxpayer who have applied for cancellation of registration are not burdened with return filing, amendments have been made to section 29 of the CGST Act to change the status of registration to "suspended". Once the officer changes the status of the registration to "suspended", the taxpayer would not be required to file the GST returns till the order for cancellation has been passed and once the order for cancellation is passed, the taxpayer can file the final return and complete the de-registration formalities.

Rule 22 of the CGST Rules, 2017, provides for process of cancellation of registration and includes the following:

- Cancellation can be done by Proper Officer suo moto or on application made by the registered person;
- Retrospective cancellation in case of fraud, wilful misstatement or suppression of fact;
- Liability to pay tax before the date of cancellation will not be affected;
- Cancellation under CGST Act will be deemed cancellation under SGST Act and *vice-versa*;
- Substantial penalty in case of registration obtained with fraudulent intentions;
- Notice of hearing and opportunity of being heard is a must before cancellation.

Further, Government has issued *Circular No. 69/43/2018-GST, dated 26.10.2018* amended vide *Circular No. 88/07/2019-GST, dated* 01.02.2019 on standard operating procedure for processing of applications for cancellation of registration submitted in Form GST REG-16.

Final Return : As per section 45 read with rule 81,every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish online on the GST Portal, a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in Form GSTR-10 as specified in rule 81.

Through *Circular No. 95/14/2019-GST dt. 28.03.2019,* the Proper Officers have been advised to carefully verify the applications received for grant of new registration. It has come to notice that the taxpayers whose registrations have been cancelled and who desire to continue to carry on business and therefore are required to have registration under GST, are not applying for revocation of cancellation of registration as specified in section 30 read with rule 23. Instead, such persons are applying for fresh registration. Such new applications might have been made as such person may not have furnished requisite returns and not paid tax for the tax periods covered under the old/cancelled registration. Further, such persons would be required to pay all liabilities due from them for the relevant period in case they apply for revocation of cancellation of registration. Hence, to avoid payment of the tax liabilities, such persons may be using the route of applying for fresh registration. It is pertinent to mention that as per the provisions contained in proviso to sub-section (2) of section 25 of the CGST Act, a person may take separate registration on same PAN in the same State. It is possible that the applicant may suppress some material information in relation to earlier registration. Hence, the Proper Officers have been instructed that they may exercise due caution while processing the application for registration submitted by the taxpayers, where the taxpayer is seeking another registration within the State although he has an existing registration within the said State, or his earlier registration has been cancelled. It may be noted that not applying for revocation of cancellation of registration along with the continuance of the conditions specified in clauses (b) and (c) of sub-section (2) of section 29 of the CGST Act shall be deemed to be a "deficiency" within the meaning of sub-rule (2) of rule 9 of the CGST Rules. Proper Officer will verify the application for new registration by fetching the details of registration taken on the PAN mentioned in the new application vis-a-vis cancellation of registration obtained on same PAN. The information regarding the status of other registrations granted on the same PAN is displayed on the common portal to both the applicant and the Proper Officer. Further, if required, information submitted by applicant in S. No. 21 of Form GST REG-01 regarding details of proprietor, all partner/Karta/ Managing Directors and whole time Director/Members of Managing Committee of Associations/ Board of Trustees etc. may be analysed vis-à-vis any cancelled registration having same details. It has been further advised that where the applicant fails to furnish sufficient convincing justification or the Proper Officer is not satisfied with the clarification, information or documents furnished, then, his application for fresh registration may be considered for rejection.

Issues/ Concerns:

a. Cancellation of registration from an earlier date: If cancellation of registration is permitted from an anterior (earlier) date, it would lead to disruption of whole credit chain and difficulties will be faced by persons who have already availed credit.

Hon'ble Delhi High Court in the case of *Ashish Garg Proprietor Shri Radhey Traders Versus Assistant Commissioner of State Goods and Service Tax Delhi Zone 7 Ward 82, 2023 (76) G.S.T.L.157 (Del.)* held that registration cannot be cancelled retrospectively for failure to file return for continuous period of six months. Hon'ble High Court ruled that although in terms of section 29 of the CGST Act, 2017, the concerned authority has the discretion to cancel the registration from a retrospective date, however, the said power cannot be exercised arbitrarily on the fact that the petitioner had not filed the returns for a continuous period of six months. The ground on which cancellation was proposed in terms of the show cause notice dated 30.06.2021 – does not, in any manner, justify retrospective cancellation from the date that the registration petition was granted in favour of applicant.

b. Commencement of business: In some cases, persons who have obtained voluntary registration may not be able to commence business within 6 months for want of clearance of registration norms, permissions and requirements etc. from other laws. Cancellation of such registration without having considered the facts of the case would be unfair.

Statutory Provisions

30. Revocation of cancellation of registration

(1) Subject to such conditions as may be prescribed, any registered 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 [77][such manner, within such time and subject to such conditions and restrictions, as may be prescribed].

[78]["]

(2) The proper officer may, in the manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

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[77] *Substituted vide The Finance Act, 2023 w.e.f. 01.10.2023 through Notf No. 28/2023-CT dt. 31.07.2023 for the following: "the prescribed manner within thirty days from the date of service of the cancellation order"*

[78] *Omitted vide Finance Act, 2023 w.e.f. 01.10.2023 through Notf No. 28/2023-CT dt. 31.07.2023. Earlier it read as:. Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended: -*

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

Extract of the CGST Rules, 2017

23. Revocation of cancellation of registration

(1) A registered person, whose registration is cancelled by the proper officer on his own motion,[79][subject to the provisions of rule 10B] may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, [80][within a period of ninety days from the date of the service of the order of cancellation of registration], at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

[81][Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding one hundred and eighty days.

Provided further that] no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

[82][[83][Provided also] that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the

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[79] *Inserted vide Notf No. 35/2021 - CT dt. 24.09.2021.Brought into force on w.e.f. 01.01.2022 vide Notf No. 38/2021 - CT dt. 21.12.2021*

[80] *Substituted vide Notf No. 38/2023-CT dt. 04.08.2023 w.e.f. 01.10.2023 for the following:*
[within a period of thirty days from the date of the service of the order of cancellation of registration or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30].

[81] *Substituted vide Notf No. 38/2023-CT dt. 04.08.2023 w.e.f. 01.10.2023.*

[82] *Inserted vide Notf No. 20/2019-CT dt. 23.04.2019.*

[83] *Substituted for "Provided further" vide Notf No. 38/2023-CT dt. 04.08.2023 w.e.f. 01.10.2023.*

effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration]

(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-22 within a period of thirty days from the date of the receipt of the 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 REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG–23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-24.

(4) Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

Related provisions of the Statute:

Section or Rule	Description
Section 22	Persons liable for registration
Section 24	Compulsory registration in certain cases
Section 25	Procedure for registration
Section 29	Cancellation of registration

30.1 Analysis

Any registered taxable person, whose registration is cancelled, subject to prescribed conditions and circumstances, and subject to *the provisions of rule 10B,* may apply to Proper Officer for revocation of cancellation of the registration in such manner within 90 days from the date of service of the cancellation order or within such time period as extended by Additional Commissioner or Joint Commissioner or Commissioner as the case may be in exercise of the powers provided under the proviso to sub-section (1) of section 30 which cannot be more than one hundred and eighty days *in toto*. The Proper Officer may in prescribed manner and within prescribed period, by an order, either revoke cancellation of the registration, or reject the application for revocation for good and sufficient reasons.

The Proper Officer shall not reject the application for revocation of cancellation of registration without giving a show cause notice and without giving the person a reasonable opportunity of being heard.

Revocation of cancellation of registration under State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a revocation of cancellation of registration under the Central Goods and Services Tax Act.

Rule 23 of the CGST Rules, 2017, provides for process of revocation of cancellation of registration and includes the following:

- Application for revocation or cancellation of registration shall be made within 90 days of date of service of cancellation order or within such time period as extended by Additional Commissioner or Joint Commissioner or Commissioner as the case may be in exercise of the powers provided under the proviso to sub-section (1) of section 30 but not later than 180 days.
- No application for revocation shall be filed, if the registration has been cancelled for the failure to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.
- Revocation of cancellation under CGST will be a deemed revocation under SGST and *vice-versa*.

Government has issued a *Removal of Difficulty Order No. 05/2019-Central Tax dated 23.04.2019*, wherein persons whose registrations were cancelled under sub-section (2) of section 29 of the said Act after they were served notice in the manner provided in section clause (c) and clause (d) of sub-section (1) of section 169 of the said Act and who could not reply to the said notice and for whom cancellation order was passed up to 31.03.2019, were given one time opportunity to apply for revocation of cancellation of registration on or before the 22.07.2019. Further, vide *Notification No. 20/2019-Central Tax dated the 23.04.2019*, two provisos have been inserted in sub-rule (1) of rule 23 of the Central Goods and Services Tax Rules, 2017.

CBIC further issued clarification vide *Circular No. 99/18/2019 dated 23.04.2019* clarifying the procedure and time limit for revocation of cancellation of registration as per *Removal of Difficulty Order No. 05/2019-Central Tax dated 23.04.2019.*

The above sort of relaxations is provided by CBIC from time to time based on the recommendations of the Council.

Vide *Notification 34/2021 Central Tax dated 29.08.2021*, the Government notified that where a registration has been cancelled under clause (b) or (c) of sub-section (2) of section 29 and the time limit for making an application of revocation of cancellation of registration under sub-section (1) of section 30 of the said Act falls during the period from the 1st day of March, 2020 to 31st day of August, 2021, the time limit for making such application shall be extended upto the 30th day of September, 2021. Various clarifications in implementing this notification has also been provided *vide Circular No. 158/4/2021-GST dated 06.09.2021*.

Special Procedure in case of failure to apply for revocation of cancellation of registration within the time limit prescribed under section 30 [*Notification No. 03/2023 – Central Tax dated 31.03.2023*]

The following are the special procedure for application for revocation of cancellation of registration under section 30:

- These procedures shall be applicable to registered persons whose registration has been cancelled due to contravention of provisions of section 29(2)(b) or 29(2)(c) (i.e., non-filing of return of income) on or before 31.12.2022 and such persons have failed to apply for revocation of cancellation of registration within the time limit specified u/s 30.

  (Including a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the CGST Act has been rejected on the ground of failure to adhere to the time limits specified under section 30(1)

- The last of application for revocation shall be 30.06.2023 (No further extension of time limit in respect of the same shall be available in such cases)

- The returns pertaining to tax periods upto the effective date of cancellation of registration shall be furnished and any amount of tax due in terms of such returns, along with interest, penalty and late fee in respect of such return shall be paid.

Extract of the CGST Rules, 2017

Rule 24. Migration of persons registered under the existing law. -

(1) (a) Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the provisions of the Income-tax Act, 1961 (Act 43 of 1961) shall enrol on the common portal by validating his e-mail address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner.

(b) Upon enrolment under clause (a), the said person shall be granted registration on a provisional basis and a certificate of registration in FORM GST REG-25, incorporating the Goods and Services Tax Identification Number there in, shall be made available to him on the common portal:

Provided that a taxable person who has been granted multiple registrations under the existing law on the basis of a single Permanent Account Number shall be granted only one provisional registration under the Act:

[84][****]

[84] *Omitted vide Notf. No.7/2017-CT dt.27.06.2017.*

(2) (a) *Every person who has been granted a provisional registration under sub-rule (1) shall submit an application electronically in FORM GST REG-26, duly signed or verified through electronic verification code, along with the information and documents specified in the said application, on the common portal either directly or through a Facilitation Centre notified by the Commissioner.*

(b) *The information asked for in clause (a) shall be furnished within a period of three months or within such further period as may be extended by the Commissioner in this behalf.*

(c) *If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration in FORM GST REG-06 shall be made available to the registered person electronically on the common portal.*

(3) *Where the particulars or information specified in sub-rule (2) have either not been furnished or not found to be correct or complete, the proper officer shall, after serving a notice to show cause in FORM GST REG-27 and after affording the person concerned a reasonable opportunity of being heard, cancel the provisional registration granted under sub-rule (1) and issue an order in FORM GST REG-28 :*

Provided that the show cause notice issued in FORM GST REG-27 can be withdrawn by issuing an order in FORM GST REG-20, if it is found, after affording the person an opportunity of being heard, that no such cause exists for which the notice was issued.

[85]*[(3A) Where a certificate of registration has not been made available to the applicant on the common portal within a period of fifteen days from the date of the furnishing of information and particulars referred to in clause (c) of sub-rule (2) and no notice has been issued under sub-rule (3) within the said period, the registration shall be deemed to have been granted and the said certificate of registration, duly signed or verified through electronic verification code, shall be made available to the registered person on the common portal.]*

(4) *Every person registered under any of the existing laws, who is not liable to be registered under the Act may,* [86]*[on or before* [87]*[31st March 2018]], at his option, submit an application electronically in FORM GST REG-29 at the common portal for the*

[85] *Inserted vide Notf. No. 7/2017-CT dt. 27.06.2017.*

[86] *Substituted vide Notf. No. 17/2017 – dt. 27.7. 2017, w.e.f. 22.07.2017. for "within a period of thirty days from the appointed day".*

[87] *Substituted vide Notf. No. 03/2018-CT dt. 23.01.2018.*

cancellation of registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.

[88][Rule 25. Physical verification of business premises in certain cases. -

(1) Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

(2) Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal at least five working days prior to the completion of the time period specified in the said proviso.]

Rule 26. Method of authentication. -

(1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf:

[89][~~Provided that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall furnish the documents or application verified through digital signature certificate.~~

[90][~~Provided further that a registered person registered under the provisions of the Companies Act,2013 (18 of 2013) shall, during the period from the 21st day~~

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[88] Substituted vide Notf. No. 38/2023-CT dt. 04.08.2023 before it was read as,

"25. [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 person is required due to failure of Aadhaar authentication [2][or due to not opting for Aadhaar authentication] before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification]."

[89] All the provisos omitted vide Notf. No. 32/2021-CT dt. 29.08.2021 w.e.f. 01.11.2021.

[90] Substituted vide Notf. No. 48/2020-CT dt. 19.06.2020 w.e.f. 27.05.2020.

~~*of April, 2020 to the 30th day of September, 2020,also be allowed to furnish the return under section 39 in* ***FORM GSTR-3B*** *verified through electronic verification code (EVC).*~~

~~***Provided*** *also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013)shall, during the period from the 27th day of May, 2020 to the 30th day of September, 2020, also be allowed to furnish the details of outward supplies under section 37 in* ***FORM GSTR-1*** *verified through electronic verification code (EVC).]*~~

[91]~~*[****Provided*** *also that a registered person registered under the provisions of the Companies Act, 2013(18 of 2013) shall, during the period from the 27th day of April, 2021 to the* [92]~~*[31st day of October, 2021], also be allowed to furnish the return under section 39 in* ***FORM GSTR-3B*** *and the details of outward supplies under section 37 in* ***FORM GSTR-1*** *or using invoice furnishing facility, verified through electronic verification code (EVC).]*~~

(2) Each document including the return furnished online shall be signed or verified through electronic verification code-

(a) in the case of an individual, by the individual himself or where he is absent from India, by some other 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 thereof;

(f) in the case of any other association, by any member of the association or persons or authorised signatory thereof;

(g) in the case of a trust, by the trustee or any trustee or authorised signatory thereof; or

(h) in the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48.

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[91] *Inserted vide Notf. No. 07/2021-CT dt. 27.04.2021.*

[92] *Substituted vide Notf. No. 32/2021-CT dt. 29.08.2021.*

(3) All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate [93][or through E-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.

Rule 26 of the CGST Rules, 2017 provides for the following method of authentication:

1. All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in this behalf.

   Provided that a registered person registered under the provisions of the Companies Act, 2013 shall furnish the documents or application verified through digital signature certificate.

   [94][Provided further that a registered person registered under the provisions of the Companies Act, 2013 shall, during the period from the 21st day of April, 2020 to the 30th day of September, 2020, also be allowed to furnish the return under section 39 in FORM GSTR-3B verified through electronic verification code (EVC).

   Provided also that a registered person registered under the provisions of the Companies Act, 2013 shall, during the period from the 27th day of May, 2020 to the 30th day of September, 2020, also be allowed to furnish the details of outward supplies under section 37 in FORM GSTR-1 verified through electronic verification code (EVC)]

   [95][Provided also that a registered person registered under the provisions of the Companies Act, 2013 shall, during the period from the 27th day of April, 2021 to the [96][31st day of October, 2021] also be allowed to furnish the return under section 39 in FORM GSTR-3B and the details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility, verified through electronic verification code (EVC).]

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[93] Substituted vide Notf. No. 7/2017-CT dt. 27.06.2017 w.e.f. 22.06.2017.

[94] Substituted vide Notf No. 48/2020-CT dt. 19.06.2020 w.e.f. 27.05.2020.

[95] Inserted vide Notf No. 07/2021-CT dt. 27.04.2021.

[96] Inserted vide Notf No. 27/2021-CT dt. 01.06.2021.

It is to be noted that as per *Notification No. 32/2021-Central Tax dated 29.08.2021, w.e.f. 01.11.2021*, all the provisos in rule 26 have been omitted.

Effect of such omission would be that w.e.f. 01.10.2021, the procedure of Electronic Filing of all applications and documents shall be made with Digital Signature Certificate or e-signature as specified under Information Technology Act, 2000 instead of Electronic Verification Code (EVC).

2. Each document including the return furnished online shall be signed or verified through electronic verification code-

(a) in the case of an individual, by the individual himself or where he is absent from India, by some other person duly authorized 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 HUF, 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 authorized signatory of such Karta;

(c) in the case of a Company, by the chief executive officer or authorized signatory thereof;

(d) in the case of a Government or any Governmental agency or local authority, by an officer authorized in this behalf;

(e) in the case of a firm, by any partner thereof, not being a minor or authorized signatory thereof;

(f) in the case of any other association, by any member of the association or persons or authorized signatory thereof;

(g) in the case of a trust, by the trustee or any trustee or authorized signatory thereof; or

(h) in the case of any other person, by some person competent to act on his behalf, or by a person authorized in accordance with the provisions of section 48.

It is also provided that all notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the Proper Officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate or through E-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in this behalf.

30.3 FAQs

Q1. Who is the person liable to take a registration under the GST Law?

Ans. In terms of sub-sections (1) of sections 22 of the CGST Act, every supplier making taxable supplies is liable for registration if his aggregate turnover in a financial year

exceeds ₹20 lakhs. However, relaxation is available for persons involved in exclusive supply of goods.

Q2. What is the time limit for taking a registration under GST Law?

Ans. Every person should take registration, within 30 days from the date on which he becomes liable for registration, in such manner and subject to such conditions as may be prescribed. Provided casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Q3. If a person is operating in different States, with the same PAN, whether he can operate with a single registration?

Ans. Every person who is liable to take a registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of sub-section (1) of section 25 of the CGST Act.

Q4. Whether a person having multiple places of place of business in a State can obtain different registrations?

Ans. In terms of sub-sections (2) of sections 25, a person having multiple places of business in a State may obtain a separate registration for each such place of business, subject to such conditions as may be prescribed.

Q5. Is there a provision for a person to get himself registered voluntarily though he may not be liable to pay GST?

Ans. In terms of sub-section (3) of section 25 a person, though not liable to be registered under section 22, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

Q6. Is possession of a Permanent Account Number (PAN) mandatory for obtaining a registration?

Ans. 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 section 22 of the CGST Act.

Q7. Whether the Department through the Proper Officer, suo-moto proceeds with registration of a person under this Act?

Ans. In terms of sub-section 8 of sections 25, 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.

Q8. When can the Proper Officer grant a certificate of registration?

Ans. In terms of sub-section 10 of section 25, the registration certificate, shall be granted or rejected after due verification in the manner and within such period as may be prescribed.

Q9. Whether the registration granted to any person is permanent?

Ans. Yes, the registration certificate once granted is permanent unless surrendered or cancelled.

Q10. What is the validity period of the registration certificate issued to casual taxable person and non-resident taxable person?

Ans. The certificate of registration issued to a "casual taxable person" or a "non-resident taxable person" shall be valid for a period of 90 days from the effective date of registration. A discretionary power has been made available with the Proper Officer, who may at the request of the said taxable person, extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.

Q.11. Is there any advance tax to be paid by casual taxable person and non-resident taxable person at the time of obtaining registration under this special category?

Ans. Yes, it has been made mandatory in the Act, that a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (2) of section 27, 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. This provision of depositing advance additional amount of tax equivalent to the estimated tax liability of such person is applicable for the period for which the extension beyond 90 days is being sought.

Q12. Whether an amendment to the Registration Certificates issued by the Proper Officer is permissible?

Ans. In terms of sections 28, the Proper Officer may, on the basis of such information furnished either by the registrant or as ascertained by him, approve or reject amendments in the registration particulars in the manner and within such period as may be prescribed.

Q13. Whether cancellation of registration certificate is permissible?

Ans. Any registration granted under this Act may be cancelled by the Proper Officer, on various circumstances and the provisions of the law on this subject have been outlined under sections 29 of the Act. 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.

Q14. Whether cancellation of registration under CGST Act means cancellation under SGST Act also?

Ans. 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 respectively.

Q.15. Can the Proper Officer cancel the registration on his own?

Ans. Yes, the Proper Officer can cancel the registration once issued on his own volition. However, such officer must follow the principles of natural justice by issuing a notice and providing an opportunity of being heard.

Q.16. Is registration mandatory for a person making inter-State supplies?

Ans. Registration is mandatory only for persons making inter-State supply of goods irrespective of the fact that the aggregate turnover computed on all India basis does not exceed ₹ 20 lakhs. Persons making inter-State supply of services whose aggregate turnover on all India basis does not exceed ₹ 20 lakhs are exempted from registration *vide Notification No. 10/ 2017-Integrated Tax dated 13.10.2017* as amended *vide Notification No. 3/2019-Integrated Tax dated 29.01.2019, w.e.f. 01.02.2019*. [Refer detailed discussions made for this issue under section 24 above].

Q.17 Is it mandatory to mention all HSN/SAC Codes, proposed to be supplied, in registration application? Can we supply goods or services other than those mentioned in registration certificate?

Ans. As per FAQ on Registration, a minimum of just one goods or service (one HSN or SAC code) is required to be mentioned in registration application. Further, there is no limit to the number of goods one can supply or the number of services one can provide under a single registration. Since it will be mandatory to enter HSN/SAC details in the line items in invoices under the GST regime, the HSN/SAC information will be readily available to the relevant stakeholders.

Chapter 8
Tax Invoice, Debit and Credit Notes

Sections	Rules
31. Tax Invoice	46. Tax Invoice
31A. Facility of digital payment to recipient	46A. Invoice-cum-bill of supply
32. Prohibition of unauthorized collection of tax	47. Time limit for issuing tax invoice
33. Amount of tax to be indicated in tax invoice and other documents	48. Manner of issuing invoice
34. Credit and debit notes	49. Bill of supply
	50. Receipt voucher
	51. Refund voucher
	52. Payment voucher
	53. Revised tax invoice and credit or debit notes
	54. Tax invoice in special cases
	55. Transportation of goods without issue of invoice
	55A. Tax invoice or bill of supply to accompany transport of goods

Statutory Provisions

31. Tax invoice

(1) A registered 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 Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

[1][Provided that the Government may, on the recommendations of the Council, by notification-

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

(b) subject to the condition mentioned therein, specify the categories of services in respect of which—

(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(ii) tax invoice may not be issued].

(3) Notwithstanding anything contained in sub-sections (1) and (2) —

(a) a registered 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 beginning with the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

[(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 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 person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;][2]

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance

[1] Substituted vide The Finance Act, 2020 w.e.f. 01st January 2021 through Notf No. 92/2020-CT dt. 22.12.2020.

[2] The CGST (Third Removal of Difficulties) Order, 2019 dt. 08.03.2019 has clarified that provisions of section 31(3)(c) shall apply to a person paying tax under Notf. No. 2/2019-CT(R) dt. 07.03.2019.

thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;

(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

(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) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,––

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

(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 made before such cessation.

(7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation.––For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Extract of the CGST Rules, 2017

46. Tax invoice

Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as '_' and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

[3][Provided that [4][in cases involving supply of online money gaming or in cases] where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the [5][name of the State and the said address shall be deemed to be the address on record of the recipient]].

(g) Harmonised System of Nomenclature code for goods or services;

(h) description of goods or services;

(i) quantity in case of goods and unit or Unique Quantity Code thereof;

(j) total value of supply of goods or services or both;

(k) taxable value of the supply of goods or services or both taking into account discount

[3] Inserted vide Notf. No. 26/2022-CT dt. 26.12.2022

[4] Inserted vide Notf No. 51/2023 – CT dated 29.09.2023 w.e.f. 01.10.2023.

[5] Substituted vide Notf No. 38/2023 - CT dated 04.08.2023 before it was read as, "name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient".

or abatement, if any;

(l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;

(o) address of delivery where the same is different from the place of supply;

(p) whether the tax is payable on reverse charge basis; and

(q) signature or digital signature of the supplier or his authorised representative

(r) [6][Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of rule 48]

[7][(s) a declaration as below, that invoice is not required to be issued in the manner specified

under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of rule 48-

I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.]

[8][Provided that the Board may, on the recommendations of the Council, by notification, specify-

(i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or

(ii) a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and

(iii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services:]

Provided further that where an invoice is required to be issued under clause (f) of sub-section (3) of section 31, a registered person may issue a consolidated invoice at the end of a month for supplies covered under sub-section (4) of section 9, the aggregate value of

[6] Inserted vide Notf. No. 72/2020-CT dt. 30.09.2020 read with Corrigendum GSR 611(E), dt. 01.10.2020
[7] Inserted vide Notf. No. 14/2022 - CT dt. 05.07.2022
[8] Substituted vide Notf No. 79/2020-CT dt.15.10.2020

such supplies exceeds rupees five thousand in a day from any or all the suppliers:

[9][Provided also that in the case of the export of goods or services, the invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX" or "SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX", as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details, namely,- (i) name and address of the recipient; (ii) address of delivery; and (iii) name of the country of destination:]

Provided also that a registered person [5][other than the supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens] may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely,-

(a) the recipient is not a registered person; and

(b) the recipient does not require such invoice, and

shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

[10][Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).]

[11][Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.]

*[12] **[46A. Invoice-cum-bill of supply***

Notwithstanding anything contained in rule 46 or rule 49 or rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies.]

[Provided that the said single "invoice-cum-bill of supply" shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.][13]

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[9] Substituted vide Notf No. 17/2017-CT dt. 27.07.2017
[5] Inserted vide Notf No. 33/2019-CT dt. 18.07.2019 w.e.f. 01.09.2019
[10] Inserted vide Notf No. 74/2018 – CT dt. 31.12.2018.
[11] Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019 w.e.f. 01.04.2020 and notified by Notf No. 71/2019 dt. 13.12.2019.
[12] Inserted vide Notf. No. 45/2017 – CT dt. 13.10.2017
[13] Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.

47. Time limit for issuing tax invoice

The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service:

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty-five days from the date of the supply of service:

Provided further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

48. Manner of issuing invoice

(1) The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely, -

(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.

(2) The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely, -

(a) the original copy being marked as ORIGINAL FOR RECIPIENT; 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.

[14][(4) *The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.*

[15][*Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of*

[14] *Inserted vide Notf No. 68/2019 – CT dated 13.12.2019.*
[15] *Inserted vide Notf No. 72/2020 – CT dated 30.09.2020.*

invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.]

(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

(6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4)]

49. Bill of supply

A bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details, namely, -

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(e) Harmonised System of Nomenclature Code for goods or services;

(f) description of goods or services or both;

(g) value of supply of goods or services or both considering discount or abatement, if any; and

(h) signature or digital signature of the supplier or his authorised representative:

Provided that the provisos to rule 46 shall, mutatis mutandis, apply to the bill of supply issued under this rule:

Provided further that any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

[16][Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).]

[17][Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the bill of supply shall have Quick Response (QR) code.]

[16] Inserted vide Notf No. 74/2018 – CT dated 31.12.2018.

[17] Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019 read with Notf No. 71/2019-CT dt. 13.12.2019 w.e.f. 01.04.2020.

50. Receipt voucher

A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars, namely,-

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(e) description of goods or services;

(f) amount of advance taken;

(g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(h) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;

(j) whether the tax is payable on reverse charge basis; and

(k) signature or digital signature of the supplier or his authorised representative:

Provided that where at the time of receipt of advance,-

(i) the rate of tax is not determinable; the tax shall be paid at the rate of eighteen per cent.;

(ii) the nature of supply is not determinable, the same shall be treated as inter-State supply.

51. Refund voucher

A refund voucher referred to in clause (e) of sub-section (3) of section 31 shall contain the following particulars, namely:-

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(e) number and date of receipt voucher issued in accordance with the provisions of rule 50; *(f) description of goods or services in respect of which refund is made;* *(g) amount of refund made;* *(h) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);* *(i) amount of tax paid in respect of such goods or services (central tax, State tax, integrated tax, Union territory tax or cess);* *(j) whether the tax is payable on reverse charge basis; and* *(k) signature or digital signature of the supplier or his authorised representative.*
52. Payment voucher *A payment voucher referred to in clause (g) of sub-section (3) of section 31 shall contain the following particulars, namely: -* *(a) name, address and Goods and Services Tax Identification Number of the supplier if registered;* *(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;* *(c) date of its issue;* *(d) name, address and Goods and Services Tax Identification Number of the recipient;* *(e) description of goods or services;* *(f) amount paid;* *(g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);* *(h) amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);* *(i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and* *(j) signature or digital signature of the supplier or his authorised representative.*
53. Revised tax invoice and credit or debit notes *(1) A revised tax invoice referred to in section 31* [18][*~~and credit or debit notes referred to in section 34~~] shall contain the following particulars, namely: -* *(a) the word —" Revised Invoice", wherever applicable, indicated prominently;*

[18] *Omitted vide Notf No. 03/2019 – CT dated 29.01.2019 w.e.f. 01.02.2019.*

(b) *name, address and Goods and Services Tax Identification Number of the supplier;*

(c) [19]*[~~nature of the document~~;]*

(d) *a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;*

(e) *date of issue of the document;*

(f) *name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;*

(g) *name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;*

(h) *serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;*

(i) [20]*[~~value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient~~;]*

(j) *signature or digital signature of the supplier or his authorised representative.*

[21]*[(1A) A credit or debit note referred to in section 34 shall contain the following particulars, namely:–*

(a) *name, address and Goods and Services Tax Identification Number of the supplier;*

(b) *nature of the document;*

(c) *a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;*

(d) *date of issue of the document;*

(e) *name, address and Goods and Services Tax Identification Number or Unique Identity 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 un-registered;*

(g) *serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;*

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[19] Omitted vide Notf No. 03/2019 – CT dated 29.01.2019 w.e.f. 01.02.2019.
[20] Omitted vide Notf No. 03/2019 – CT dated 29.01.2019 w.e.f. 01.02.2019.
[21] Inserted vide Notf No. 03/2019 – CT dated 29.01.2019 w.e.f. 01.02.2019.

(h) *value of taxable supply 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 authorised representative.]*

(2) *Every registered 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 the issuance of the certificate of registration:*

Provided that the registered 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 the case of inter-State supplies, where the value of a supply does not exceed two lakh and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all the recipients located in a State, who are not registered under the Act.

(3) *Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE".*

54. Tax invoice in special cases

(1) *An Input Service Distributor invoice or, as the case may be, an Input Service Distributor credit note issued by an Input Service Distributor shall contain the following details:-*

(a) *name, address and Goods and Services Tax Identification Number of the Input Service Distributor;*

(b) *a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as "-" , "/" respectively, and any combination thereof, unique for a financial year;*

(c) *date of its issue;*

(d) *name, address and Goods and Services Tax Identification Number of the recipient to whom the credit is distributed;*

(e) *amount of the credit distributed; and*

(f) *signature or digital signature of the Input Service Distributor or his authorised 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 mentioned above.

[22][(1A) (a) *A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the Input Service Distributor, which shall contain the following details:-*

i. *name, address and Goods and Services Tax Identification Number of the registered person having the same PAN and same State code as the Input Service Distributor;*

ii. *a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;*

iii. *date of its issue;*

iv. *Goods and Services Tax Identification Number of supplier of common service and original invoice number whose credit is sought to be transferred to the Input Service Distributor;*

v. *name, address and Goods and Services Tax Identification Number of the Input Service Distributor;*

vi. *taxable value, rate and amount of the credit to be transferred; and*

vii. *signature or digital signature of the registered person or his authorised representative.*

(b) *The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.]*

(2) *Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said* [23]*[supplier may issue] a* [24]*[consolidated tax invoice] or any other document in lieu thereof, by whatever name called* [25]*[for the supply of services made during a month at the end of the month], whether issued or made available, physically or electronically whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as mentioned under rule 46.*

[26]*[Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).]*

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[22] *Inserted vide Notf. No. 03/2018- CT dt. 23.01.2018*
[23] *Inserted vide Notf No. 45/2017-CT dt. 13.10.2017.*
[24] *Substituted vide Notf No. 45/2017-CT dt. 13.10.2017, before it was read as, "tax invoice"*
[25] *Inserted vide Notf No. 45/2017-CT dt 13.10.2017.*
[26] *Inserted vide Notf No. 74/2018-CT dt. 31.12.2018.*

(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 consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, Goods and Services Tax Identification Number of the person liable for paying tax whether as consigner, consignee or goods transport agency, and also containing other information as mentioned under rule 46.

(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, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned under rule 46.

[27][Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).]

[28][(4A) A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the Act, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under rule 46:

Provided that the supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.]

(5) The provisions of sub-rule (2) or sub-rule (4) shall apply, mutatis mutandis, to the documents issued under rule 49 or rule 50 or rule 51 or rule 52 or rule 53.

55. Transportation of goods without issue of invoice

(1) For the purposes of-

(a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,

(b) transportation of goods for job work,

(c) transportation of goods for reasons other than by way of supply, or

(d) such other supplies as may be notified by the Board,

the consigner may issue a delivery challan, serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely:-

(i) date and number of the delivery challan;

[27] Inserted vide Notf No. 74/2018-CT dt. 31.12.2018.

[28] Inserted vide Notf No. 33/2019-CT dt. 18.07.2019 w.e.f. 01.09.2019

(ii) *name, address and Goods and Services Tax Identification Number of the consigner, if registered;*

(iii) *name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;*

(iv) *Harmonised System of Nomenclature code and description of goods;*

(v) *quantity (provisional, where the exact quantity being supplied is not known);*

(vi) *taxable value;*

(vii) *tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;*

(viii) *place of supply, in case of inter-State movement; and*

(ix) *signature.*

(2) *The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner, namely:–*

(a) *the original copy being marked as ORIGINAL FOR CONSIGNEE;*

(b) *the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and*

(c) *the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.*

(3) *Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in rule 138.*

(4) *Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.*

(5) *Where the goods are being transported in a semi knocked down or completely knocked down condition [29][or in batches or lots] -*

(a) *the supplier shall issue the complete invoice before dispatch of the first consignment;*

(b) *the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;*

(c) *each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and*

(d) *the original copy of the invoice shall be sent along with the last consignment.*

[30] ***[55A. Tax Invoice or bill of supply to accompany transport of goods***

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.]

[29] *Inserted vide Notf no. 39/2018-CT dt. 04.09.2018*

[30] *Inserted vide Notf no. 03/2018-CT dt. 23.01.2018*

Related provisions of the Statute:

Section or Rule	Description
Section 2(94)	Definition of 'Registered Person'
Section 2(32)	Definition of 'Continuous supply of goods'
Section 2(33)	Definition of 'Continuous supply of services'
Section 2(41)	Definition of 'Document'
Section 2(66)	Definition of 'Invoice' or 'Tax Invoice'
Section 2(86)	Definition of 'Place of supply'
Section 2(96)	Definition of 'Removal' (in relation to goods)
Section 2(98)	Definition of 'Reverse charge'
Section 2(47)	Definition of 'Exempt supply'
Section 9	Levy and collection
Section 10	Composition levy
Section 15	Value of Taxable Supply
Section 143	Job work procedure
Rule 39	Procedure for distribution of input tax credit by ISD
Section 68	Inspection of goods in movement
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
Section 129	Detention, seizure and release of goods and conveyances in transit.
Section 130	Confiscation of goods or conveyances and levy of penalty.
Rule 138-138F	Chapter XVI – E-way Rules
Section 16 of IGST Act	Zero-rated supply

31.1 Introduction

An invoice does not bring into existence an agreement but merely records the terms of a pre-existing agreement (oral or written). An invoice can be understood as a document that is meant to serve a particular purpose. The GST Law requires that an invoice – tax invoice or bill of supply – is issued on the occurrence of certain event, being a supply, within the prescribed timelines. Therefore, an invoice, among other documents is required to be issued for every form of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal. This

chapter provides an understanding of the various documents required to be issued under the GST law, timelines to issue such document and the contents of every such document.

31.2 Analysis

A. Tax invoice on supply of goods or services: Every registered person is required to issue a tax invoice on effecting a taxable outward supply of goods or services or both.

(a) In order to determine when the tax invoice is to be issued in case of supply of goods, the supply must be classified into one of these two cases, that is, whether it is case of supply that involves movement of goods or one that does not involve movement of the goods. Timelines for issuance of a tax invoice in such case are as follows:

(i) **Where the supply involves movement of goods:** Before or at the time of removal of goods;

(ii) **Where the supply does not involve movement of goods:** Before or at the time of delivery of the goods / making them available to the recipient.

Please refer to chapter 4 of time of supply for a detailed discussion about removal and movement of goods, mode and time of delivery of goods and the role of supplier or recipient in determining the answers to these questions.

(b) It is crucial for the supplier to determine the point of time at which the service is provided. Service being intangible in nature would throw several challenges in identifying the point of time at which it can be said to be provided / completed. Timelines for issuance of tax invoice on the supply of taxable services:

(i) before the provision of services; or

(ii) after the provision of services but within 30 days *(or 45 days in case of suppliers of services being an insurer / banking company / financial institution, including a NBFC)* from the date of supply of the service; or

(iii) before or at the time, the supplier records the supplies in his books of account or before the expiry of the quarter during which the supply was made, in case of supply of taxable services between distinct person by an insurer or a banking company or a financial institution, a NBFC, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council. No such notification has been issued so far.

(iv) an insurer / banking company / financial institution, including a NBFC may issue an invoice or any other document in lieu thereof.

(c) In terms of rule 46 of the CGST Rules, 2017, a tax invoice referred to in this section shall be issued by the registered person containing all the particulars specified in the said rule, as applicable to the transaction.

Notes:

- ✓ Where the registered person effects both taxable and exempt supplies to an unregistered person, he may issue a single **'Invoice-cum- bill of supply'** instead of 'tax invoice', for all such supplies as provided in rule 46A.
- ✓ A registered person can issue multiple series of invoices. No application is required to be filed with the Tax office in this regard. However, the suppliers would be required to report the serial numbers (from & to, along with the number of cancellations during the tax period) of all the series of tax invoices (and other documents covered under this Chapter) in Form GSTR-1.

(d) The tax invoice must be prepared in triplicate for goods, and in duplicate for services. Each copy of the tax invoice is required to be marked as follows:

Goods	Services
1. ORIGINAL FOR RECIPIENT	1. ORIGINAL FOR RECIPIENT
2. DUPLICATE FOR TRANSPORTER	2. DUPLICATE FOR SUPPLIER
3. TRIPLICATE FOR SUPPLIER	–

(e) [31][As regards the requirement to quote the HSN of the supplies, the aggregate turnover of the registered person for the previous financial year shall be referred. with effect from the 1st April 2021, in case of suppliers having aggregate turnover in the preceding Financial Year:–

(i) Upto INR 5 Crore – HSN up to 4 digits required;

(ii) Exceeding INR 5 Crore – HSN up to 6 digits required.

Provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, as specified above in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.]

It needs to be noted that as per section 2(6) '*aggregate* turnover' means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

It is also relevant to note that there has been no notification issued in respect of services, separately. However, considering that the term 'HSN' has been used

[31] *Substituted vide Notf No. 78/2020 – CT dt. 15th October, 2020.*

commonly in respect of both goods and services, the aforesaid order can be applied even in respect of services, while quoting the code from the scheme of Classification of Services, as provided in *Notification No. 11/2017-Central Tax (Rate) dt.28.06.2017.*

(f) As per clause (q) of rule 46, a tax invoice shall contain the signature or digital signature of the supplier or his authorised representative. [32][However, such signature or digital signature shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000)].

(g) Tax Invoices in cases of outward supply of special services- Rule 54

Sl. No.	Class of supplier of taxable services	Nature of document	Optional	Mandatory
1	Insurer, Banking Company, Financial Institution and NBFC*- Rule 54(2)	Consolidated Tax Invoice or any other similar document at the end of the month for services supplied during the month.	a. Serial no. b. Address of the recipient of services	All particulars as specified in rule 46 other than that specified in 'Optional' column. [33][Signature or digital signature of supplier or his auth. representative not required.]
2	Goods transport agency (GTA) transporting goods by road- Rule 54(3)	Tax Invoice or any other similar document	None	In addition to those cited in Rule 46; a. Gross weight of consignment; b. Name of the Consignor and Consignee; c. Regn. No. of Vehicle; d. Details of goods transported; e. Details of place of Origin and destination;

[32] *Inserted vide Notf No. 74/2018 – CT dated 31-12-2018*
[33] *Inserted vide Notf No. 74/2018 – CT dated 31-12-2018*

Sl. No.	Class of supplier of taxable services	Nature of document	Optional	Mandatory
				f. GSTIN of person liable to pay tax whether as consignor / consignee / GTA.
3	Passenger transport agency*- Rule 54(4)	Tax invoice or ticket	a. Serial no. b. Address of the recipient of services	All particulars as specified in rule 46 other than that specified in 'Optional' column [34][Signature or digital signature of supplier or his authorised representative not required].
4	[35][Exhibitor of cinematographic films in multiplex screens- Rule 54(4A)]	Electronic ticket	Details of the recipient of service	All particulars as specified in Rule 46 other than that specified in 'Optional' column. Issue of electronic ticket optional for Supplier of such service in a screen other than multiplex screen
* *Equally applicable to the following documents: Bill of supply, receipt voucher, refund voucher, payment voucher, revised tax invoice and debit or credit notes- Rule 54(5)*				

(h) Specifically, in case of export of goods or services, the following may be noted:

(i) The invoice shall carry an endorsement as follows:

1. *Where the supply is effected on payment of IGST:* "Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax" or

[34] *Inserted vide Notf No. 74/2018 – CT dated 31.12.2018.*
[35] *Inserted vide Notf No. 33/2019 – CT dated 18.07.2019.*

2. *Where the supply is effected without payment of IGST:* "Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax".

(ii) In lieu of the State name & State code, the name of the country of destination would have to be provided.

(i) Special declaration would have to be made on a tax invoice or debit note prominently, containing the words "INPUT TAX CREDIT NOT ADMISSIBLE", where any invoice or debit note has been issued in pursuance of any tax payable in accordance with the provisions of [36][section 74] or [37][section 129] or [38][section 130] - Rule 53(3)

(j) Discount provided before or at the time of supply must be reflected on the face of the tax invoice in order to avail a reduction from the taxable value. Trade discounts not reflected on the face of the invoice would not qualify for such benefit, and therefore, tax on that value may also be liable to be paid.

(k) Where an invoice contains multiple goods and / or services, it needs to be noted that the details would be required to be provided in respect of every line item of the invoice (such as Description, HSN, quantity, unit of measurement, value, discount, increase in value on account of inclusions specified in section 15(2), taxable value as agreed or as determined in terms of the valuation rules, etc.).

(l) *Circular 72/46/2018 dated 26.10.2018* issued to clarify the procedure in respect of return of time expired drugs or medicines wherein it is clarified that:

- a person returning the time expired goods may issue the tax invoice or bill of supply, as the case may be in the following manner:

  (i) Return of time expired drugs / medicines by a registered person (Other than a composition taxpayer) may be treated as fresh supply and accordingly, a tax invoice may be issued for such return supply. It is also clarified that a manufacturer/wholesaler accepting the time expired medicines / drugs from wholesaler/retailer is entitled to claim the input tax credit of GST mentioned on the tax invoice issued by the registered person returning such goods;

  (ii) In case if the person returning time expired drugs / medicines is a composition tax payer, he may issue a bill of supply and pay the tax

[36] *Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.*
[37] *Detention, seizure and release of goods and conveyances in transit*
[38] *Confiscation of goods or conveyances and levy of penalty*

applicable to a composition tax payer. In such a scenario, there does not arise a question to claim input tax credit by the manufacturer/wholesaler;

(iii) In case of unregistered persons, time expired drugs / medicines can be returned by way of issuing any commercial document without charging any tax on the same.

- Alternatively, the goods may be returned by issuing a delivery challan and the supplier may declare (and thereby issue) the details of a credit note against such return supply under section 34(1) up to 30th November following the end of financial year in which such supply was made or the date of furnishing the relevant annual return, whichever is earlier. If this time has lapsed, he may issue a financial credit note. There is no requirement to declare such credit note on the common portal as tax liability cannot be adjusted in this case.

(m) **Exception to the rule that every supply must be supported by a tax invoice (Section 31(3)(b) read with 4th proviso to rule 46):** A registered person [39](Other than an exhibitor of cinematograph films in multiplex screens) is not required to issue a separate tax invoice in respect of supply of goods and / or services where the value of supply is lower than ₹ 200/-, subject to the following conditions:

(i) the recipient is not a registered person; and

(ii) the recipient does not require such invoice; and

(iii) the supplier issues a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

Note: A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens is required to issue an electronic ticket in all cases which shall be deemed to be a tax invoice for all purposes of the Act-[Rule 54(4A)]

B. Revised Tax Invoice: A revised tax invoice in terms of the GST Law [Section 31(3) (a) read with Rule 53] is different from what is construed to be a revised tax invoice in common parlance. Therefore, it is made abundantly clear that there is *NO provision under the GST Law for a registered person to revise a tax invoice* which was issued earlier, on account of errors / mistakes in the original tax invoice. Revised invoice is permitted for first-time registered persons within 30 days from the date of crossing exemption threshold.

(a) *A revised tax invoice under GST law?*

A person should apply for registration within 30 days of becoming liable for registration under section 25(1) of the CGST Act. When such an application is

[39] *Inserted vide Notf No. 33/2019-CT dated 18.07.2019 w.e.f. 01.09.2019.*

made within such time and registration is granted, the effective date of registration is the date on which the person became liable for registration, thereby resulting in a time lag between the date of grant of certificate of registration and the effective date of registration. For supplies made by such person during this intervening period, the law enables issuance of a revised tax invoice, so that ITC can be availed by the recipient on such supplies.

(b) Accordingly, a revised invoice [carrying the details as specified in rule 53(1)] may be issued for supplies effected between the effective date of registration and the date of issue of registration certificate.

The GST Law provides for issuance of a consolidated revised tax invoice in respect of all taxable supplies made to an unregistered person during such period. However, in the case of inter-State supplies where the value of supply does not exceed ₹ 2.5 Lakhs, a consolidated revised invoice may be issued separately in respect of all unregistered recipients located in a State.

Thus, a revised/ consolidated revised invoice may be issued within one month from the date of registration as follows:

- **For each inter-State B2C taxable supply of less than ₹ 2,50,000/-:** State-wise consolidated revised invoice
- **For each inter-State B2C taxable supply of ₹ 2,50,000/- and more:** Recipient wise revised invoice
- **For all intra-State B2C taxable supplies irrespective of the amount:** Consolidated revised invoice

C. Bill of supply: A bill of supply as per section 31(3)(c) is required to be issued in the following two cases:

(a) Where the supplier is a registered person who has opted for composition tax under section 10 of the Act including a [40]service provider who opts for composition scheme. (and shall not charge tax on the bill of supply); or

(b) Where the goods / services being supplied by any registered person are wholly exempted.

The registered person may not issue a bill of supply if the value of the goods and/or services supplied is less than ₹ 200/-.

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[40] *A service provider who avails the benefit of composition was allowed to issue a Bill of Supply via Removal of Difficulty Order No. 03/2019-CT dated 8.3.2019. Subsequently, sub-section (2A) was inserted in section 10 vide Finance (No. 2) Act, 2019 w.e.f. 01.01.2020 to allow a service provider to pay tax not exceeding 6% (CGST plus SGST or IGST) of turnover in State/UT if his aggregate turnover in the preceding financial year did not exceed Rs. 50 lakh.*

The bill of supply is required to contain all the applicable particulars as are specified in rule 49 of the CGST Rules, 2017. Provisos to rule 46 shall *mutatis mutandis* apply to the bill of supply issued under rule 49.

As per clause (h) of rule 49, a bill of supply shall contain signature or digital signature of the supplier or his authorised representative. However, signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the [41]Information Technology Act, 2000 (21 of 2000).]

D. Documents required to be issued in respect of receipt and refund of advances [Section 31(3)(d) & (e)]

(a) In case of receipt of advance payment by a registered person with respect to any supply of goods and/or services, a '**receipt voucher'** or any other document is required to be issued, and not a tax invoice, containing all the particulars as are prescribed in rule 50 of CGST Rules, 2017. Based on this receipt voucher, the registered person will be required to pay tax on the advances received on services. [42][GST is not applicable on advances against supply of goods]. For details, please refer the chapter 'Time of Supply'.

(b) It should be noted that the receipt voucher would also carry the details of tax applicable on the transaction when the advance so received is liable to tax (as in case of services). However, if the following key factors cannot be determined at the time of receipt of advance, then the following rule would apply:

  (i) Where the rate of tax is not determinable: Rate to be 18%;

  (ii) Where the nature of supply is not determinable: Nature to be inter-State supply.

(c) In addition to such receipt voucher, the supplier will be required to issue a **tax invoice** on effecting the supply, containing all the particulars specified in rule 46 as are required in a case where no advance had been received. In this regard, it may be noted that while the receipt voucher may not be significant where the supply takes place in the same month in which the advance is received, the law does not exempt one from issuing a receipt voucher in such a scenario.

(d) Whenever a transaction envisages issue of receipt voucher, and the same is not followed by the issuance of a tax invoice, since it does not translate into a transaction of supply, the receipt voucher issued will need to be reversed (meaning

[41] Inserted vide Notf No. 74/2018 – Central Tax dated 31-12-2018

[42] Notf. No. 40/2017-CT dated 13.10.2017 as subsequently superseded by Notf. No.66/2017-CT dated 15.11.2017.

without cancellation of the receipt voucher) by issuing a '**refund voucher'** containing particulars, as required under rule 51 of the CGST Rules, 2017.

(e) Provisions on receipt voucher and refund voucher DO NOT apply where consideration is in 'non-monetary form' as the expression 'payment' is akin only to monetary consideration whereas 'value' is akin to both monetary and non-monetary consideration. Trace the usage of these words in rule 50 to 55 to note the context of their usage and hence identify their application.

E. Documents required to be issued in respect of supplies liable to tax under reverse charge mechanism [Section 31(3)(f) & (g)]

(a) If the recipient is liable to pay tax on reverse charge basis in terms of section 9(3) or 9(4), or the corresponding provisions of the IGST Act, 2017, he shall issue an invoice (self –invoice) if he receives the supply of goods and/or services from an unregistered supplier. In this regard, the following may be noted:

Document to be issued by recipient	Supplier is registered	Supplier is not registered
Tax invoice	Not required	Required
Payment voucher	Required	Required

(b) The law makes a provision for the issuance of a **consolidated tax invoice** for every month, to be issued at the end of the month for supplies received from an unregistered person under section 9(4), where the aggregate value of such supplies liable to tax under reverse charge mechanism exceeds Rs. 5,000/- in a day from any or all the suppliers. This apart, a mirrored set of all the particulars specified under **rule 46** would be required to be contained in a tax invoice issued by a registered recipient (commonly referred to a as 'self-invoice' by trade and industry).

(c) All cases of inward supplies on which tax is payable on reverse charge basis, require the recipient of supply to issue a **payment voucher,** at the time of making payment to the supplier, containing all the applicable particulars specified in **rule 52** of the CGST Rules, 2017.

(d) It is relevant to note here that payment of tax by registered recipients on effecting inward supplies from unregistered, in terms of section 9(4) of the Act, has been exempted up to 30.09.2019, vide *Notification no 8/2017-Central Tax (rate) dated 28.06.2017* as amended time to time, however, the said notification has been rescinded by *Notification no 1/2019-Central Tax (Rate) dated 29.01.2019* w.e.f. 01.02.2019 vide the *Central Goods and Services Tax (Amendment) Act, 2018*. After amendment of section 9(4), the Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an

unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both.

(e) *Notification No. 07/2019-CT (Rate) dated 29.03.2019* as further amended vide *Notification. No. 24/2019-CT(Rate) dated 30.09.2019* issued in this respect under section 9(4) as amended specifies 'Promoter' as a class of registered persons who shall on receipt of specified goods or services as specified in the said notification from an unregistered supplier, shall pay tax on reverse charge basis.

F. Tax Invoice for an Input Service Distributor (ISD):

(a) An Input Service Distributor (ISD) is entitled to distribute credits in terms of section 20 of the Act read with rule 39 of the CGST Rules, 2017. For the purpose of such credit distribution, an ISD Invoice is required to be issued by an ISD (or a credit note where the credit distributed earlier is to be reduced for any reason), and such document is required to contain all the particulars specified in rule 54(1) of the CGST Rules, 2017.

(b) An exception has been carved out for an ISD of a banking company or a financial institution, including a NBFC, wherein the document issued for distribution may or may not be serially numbered, but must contain all the details as prescribed above.

(c) The law provides that a registered person having the same PAN and State code as that of the ISD, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the ISD (wherein the taxable value shall be the same as the value of the common services), containing the details specified in rule 54(1A). It may be noted that the said sub-rule has been inserted vide *Notification No. 03/2018 dated 23.01.2018*. By virtue of this provision, delivery location (of services) other than at the address of ISD is enabled in harmony with the concept of 'bill to and ship to' in explanation to section 16(2)(b).

G. Delivery challan: Rule 55 of the CGST Rules, 2017 provides for issuance of delivery challan, and also the mandatory contents in a delivery challan. A delivery challan is required to be issued by a registered person every time he moves goods for any reasons other than by way of supply (say supply for job work, goods sent for sale on approval basis, dispatch of demo-goods, disposal by way of gift or free samples, shipment of goods for an exhibition, etc.)

(a) It should be noted that a delivery challan is a document required for movement of goods, and not "supply of goods". This means, even where goods that are otherwise chargeable to tax as services, are moved, this document would be required. E.g., Goods moved for works contract purposes, goods sent for hire, etc.

(b) *Goods sent on approval*: Where goods are sent on approval basis, an invoice would not be required at the time of removal of goods and shall be issued only at the time

of receipt of approval from the recipient. However, if the goods so dispatched have neither been accepted nor been returned within 6 months from the date of their removal, the tax invoice is required to be issued on the date immediately succeeding the date on which the 6-month period expires.

(c) It has been clarified vide *Circular No.10/10/2017 dated 18.10.2017* that where the goods are removed for line sales or for supply on approval basis, the person removing the goods either for intra-State supplies or inter-State supplies shall raise a delivery challan along with e-way bill (if applicable) since the supplier would be unable to ascertain the actual supply at the time of removal. It is also clarified that the person removing the goods shall carry the invoice book during the movement which shall enable him to issue an invoice once the supply is complete. It is further clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of section 5 of the IGST Act, 2017.

(d) *Circular No. 22/22/2017 dated 21.12.2017* has been issued clarifying the same procedure for removal of goods by artists and supply of such goods by artists from galleries.

(e) *Circular No. 108/27/2019 dated 18.07.2019* has been issued clarifying the procedure in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion. It has been clarified that such activity except when it is covered under Schedule I of the CGST Act does not constitute supply as no consideration is involved at that point in time and consequently same cannot be considered as Zero-rated supply under section 16 of the IGST Act. It has been further clarified that such goods shall be accompanied with a delivery challan. When such goods have been sold fully or partially, within the stipulated period of six months as per section 31(7) of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal.

(f) While the law only provides for movement in general, a corollary can be that a delivery challan may be for movement-outward or / and movement-inward.

(g) A delivery challan would also be required to be prepared in triplicate, as applicable in case of tax invoices for goods (explained above).

(h) The rules also specify the nature of other documents to be carried along with the goods under transportation. Note that this list is illustrative and not exhaustive.

Nature of supply	Mandatory documents	Particulars to be contained in the document
(1) Where tax invoice could not be issued at the time of removal of goods for supply; (2) Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known; (3) Transportation of goods for job work; (4) Transportation of goods for reasons other than by way of supply; or (5) Such other supplies notified by the Board	1. The consignor to issue a delivery challan. 2. Serially numbered delivery challan to be issued in lieu of invoice at the time of removal of goods for transportation.	(i) Date and number of the delivery challan, (ii) Name, address and GSTIN of the consigner, if registered, (iii) Name, address and GSTIN or UIN of the consignee, if registered, (iv) HSN code and description of goods, (v) Quantity (provisional, where the exact quantity being supplied is not known), (vi) Taxable value, (vii) Tax rate and tax amount – CGST, SGST/ UTGST, IGST or cess, where the transportation is for supply to the consignee, (viii) Place of supply, in case of inter-State movement, and (ix) Signature.

H. Important note: The person-in-charge of the conveyance shall carry a copy of the **tax invoice** or the **bill of supply** or **tax invoice cum bill of supply**, as explained in the preceding paragraphs, in a case where such person is not required to carry an e-way bill [as per rule 55A].

I. Special cases

(a) *Continuous supply of goods [section 31(4)]:* In case of a continuous supply of goods as defined in section 2(32), where successive statement of accounts or successive payments are involved, the tax invoice is required to be issued before or at the time:

— when each such statement or a running-claim is issued; or

— when each such payment is received.

> *Section 2(32) - "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 and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;*

(b) *Continuous supply of services [section 31(5)]:* In case of a continuous supply of services as defined in Section 2(33) of the CGST Act, 2017, a tax invoice is required to be issued as follows:

(i) When payment date is ascertainable as per the contract:

- On or before the due date for payment.

(ii) When payment date is not ascertainable from the contract:

- On or before the time when the supplier of services receives the payment.

(iii) When payment is linked to completion of an event:

- On or before the date of completion of the event.

> *2(33) "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 services as the Government may, subject to such condition as it may, by notification, specify.*

(c) *Goods sent on SKD / CKD conditions/batches/lots [rule 55(5)]:* Where the goods are being transported in a semi knocked down (SKD) or completely knocked down (CKD) conditions or in batches or lots, the supplier must first issue the complete invoice before the first consignment is moved. A delivery challan is to be issued for each of the subsequent consignments giving reference of the said invoice. Each consignment shall be accompanied by copies of the corresponding delivery challan in terms of rule 55 of the CGST Rules, 2017 along with a certified copy of the invoice. It is imperative to note that the original invoice must accompany the last consignment. Experts caution that goods sent in CKD-SKD or consignments must apply the HSN applicable to the Complete Built Up (CBU) and not Parts in each consignment. Very often goods are sourced and shipped to site directly from various vendor locations in case of EPC project. In such cases, the EPC contractor tends to recycle the same HSN as used by the parts-vendors. Reference may be had to a very interesting decision in *Shirke Construction Equipment Pvt. Ltd. v. CCE, Pune 1997 (95) ELT 644 (Trib.)* where it was held that goods cleared in such a consignment were 'not parts of crane but crane in parts'.

(d) *Cessation of service [section 31(6)]:* On cessation of a contract for supply of services, a tax invoice is required to be issued to the extent of supply effected up to the point of cessation, and due tax shall be remitted thereon.

(e) *Bill-to-ship-to transactions:* Where the place of supply is deemed to be the principal place of business of the person on whose direction the goods are dispatched to another person (as specified in section 10(1)(b) of the IGST Act, 2017), the transaction would have 2 supplies. While one supply would be from the supplier to the person to whom the invoice is addressed, another supply would be deemed to be effected by the said addressee to the person who receives the goods. In such a case, the addressee may consider the date of making available of the goods to the ultimate recipient, as the date on which the tax invoice is liable to be issued by him. The reason being that in case of supply of goods, invoice is to be issued on or before removal of goods as per section 31(1) and the term removal of goods as defined in section 2(96) of the CGST Act also mean collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient.

(f) *Goods sent to job worker for the purpose of job work:* Where inputs or capital goods have been sent to the job worker for the purposes of job work, and have neither been returned nor been directly dispatched for supply from the place of the job worker within the timelines specified in section 19, it shall be deemed that such goods (other than moulds and dies, jigs and fixtures, or tools) have been supplied by the Principal to the job worker as on the date of dispatch of such goods to the job worker (or the date of receipt of goods by the job worker where the goods were sent to the job worker's premises without being first received at the place of business of the Principal).

Special issues concerning goods sent for Job Work

Goods sent to a job worker for the purpose of job work are a supply liable to tax under GST. However, as per section 143 of the CGST Act, the principal may under intimation and subject to fulfillment of certain conditions choose to send goods for job work without payment of tax and from there subsequently to another job worker and likewise. **FORM GST ITC-04** serves as the intimation as envisaged under section 143 - Clause (i) of Para 8.4 of *Circular No. 38/12/2018 dated 26.03.2018.*

The documents that need to be issued for movement of goods between the principal and the job worker are as follows:

- **Goods sent for job work without payment of tax – *Circular No.38/12/2018 dated 26th March, 2018* (as *amended by Circular No. 88/07/2019-GST dated 01.02.2019)*** has clarified the following:

  (a) *Where goods are sent by principal to only one job worker:* The principal shall prepare in triplicate, the challan in terms of rule 45 read with rule 55 of the CGST Rules, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal.

(b) *Where goods are sent from one job worker to another job worker:* In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker. Alternatively, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers.

(c) *Where the goods are returned to the principal by the job worker:* The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.

(d) *Where the goods are sent directly by the supplier to the job worker:* In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e. the principal) wherein the job worker's name and address should also be mentioned as the consignee, in terms of rule 46(o) of the CGST Rules. The buyer (i.e., the principal) shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly in terms of para (a) above. In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of Entry and the principal shall issue the challan under rule 45 of the CGST Rules and send the same to the job worker directly.

(e) *Where goods are returned in piecemeal by the job worker:* In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.

(f) *Issue of invoice:*

(i) *Supply of job work services:* The registered job worker shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act. The value of services determined in terms of section 15 of the CGST Act would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal.

(ii) *Supply of goods by the principal from the place of business/ premises of job worker:* Since the supply is being made by the principal, the time, value and place of supply would have to be determined in the hands of

the principal irrespective of the location of the job worker's place of business/premises. The invoice would have to be issued by the principal. It is also clarified that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal.

(iii) *Supply of waste and scrap generated during the job work:* Sub - section (5) of section 143 of the CGST Act provides that the waste and scrap generated during the job work may be supplied by the registered job worker directly from his place of business or by the principal in case the job worker is not registered. The principles enunciated in para (ii) above would apply mutatis mutandis in this case.

(g) *If inputs/capital goods are neither returned nor supplied within specified time period of 1/3 years from job worker's place of business:* The inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) would be deemed to have been supplied by the principal to the job worker, in such case. The principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year / three years or such extended period of one year or two years, respectively has expired. The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax.

If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

31.3 Issues and Concerns

1. The value of supply and the amount of GST applicable thereon is required to be reflected separately in the tax invoice, in terms of rule 46. However, a supplier is also permitted to effect supplies for an inclusive value – such as in case of travel agents paying tax on margins. In such cases, the supplier will be required to disclose their margins to the recipient, by virtue of this requirement.

2. Rule 46 of the CGST Rules, 2017 does not specifically provide as to how the details of tax must be reflected in cases of zero-rated supplies. Therefore, where a zero-rated supply has been effected on payment of IGST, the details thereof may be reflected separately on the face of the invoice, by providing a declaration to the effect that the

same is not charged to the recipient of supply, given that disclosure of tax details is mandatory. In other cases, the applicable rate of tax can be stated, whereas the tax amount can be shown as '0'.

3. The law does not specifically provide the manner in which the details of HSN, quantity, etc. must be reflected in cases of composite supply or mixed supply. However, given that section 8 regards all composite supplies as the supply of principal supply alone, only those details pertaining to the principal supply must be reflected while quoting the taxable value applicable to the composite supply as a whole. Whereas, in case of mixed supplies, the supply attracting the highest rate of tax ought to be reflected – what if both the supplies attract the same rate of tax? It is expected that clarity will come in due course.

4. While the GST law provides for a supplier to issue a revised tax invoice in respect of supplies made during the time period from the effective date of registration to the date of grant of registration certificate, there are no similar provisions found for issuance of revised tax invoice to mention the GSTIN of the recipient, wherein a supply has been effected to a taxable person who has applied for registration and receives such registration after the tax invoice has been issued by the supplier. Therefore, the recipient of supply may not be entitled to the credits on such inward supplies, unless the tax invoice is cancelled and reissued during the same tax period.

5. Given that all incidental expenses are required to be included in the value of supply, and the value of supply is determined for each of the goods and / services separately, even where all such goods and / or services are included in the same tax invoice, the incidental expenses (say freight, packing, etc.) will be required to be split up as attributable to each supply, separately. This would be a tedious task and would be practically difficult to reflect it on the face of the invoice. To ensure that no tax is underpaid, the suppliers can adopt a reasonable basis to identify the most suitable rate of tax applicable on the incidental charges, by considering the contents of the invoice.

6. Where an advance has been received and the supplier is unable to determine the nature of tax, the law provides a deeming fiction to treat such supply as an inter-State supply. This provision would, however, require a relook, considering that the place of supply is a must, for the purpose of reporting the transaction as an inter-State supply. Further, the law does not provide for closing the loop, as and when the rate of tax or the nature of tax has been ascertained. It appears that the only solution is to issue a refund voucher and reverse the effect of issue of the earlier receipt voucher, and thereafter, issue a tax invoice (where the supply has been effected), or issue a fresh receipt voucher with the correct details (where the supply is yet to be effected).

7. While rule 54(1A) provides the form in which credits can be distributed by a registered person to its own ISD in the same State, no corresponding provision has been made under the law which specifies that a registered person is entitled to issue an invoice to another registered person (whether ISD / any other person) where there is no

underlying taxable supply. However, by virtue of this sub-rule which has been inserted, the intent of the law can be safely inferred that there is no such requirement, and the registered persons may make use of this provision to furnish the details of common services to the ISD for the purpose of distribution.

31.4 FAQs

Q1. Can tax invoice be raised for advance payments received for goods or services?

Ans. No tax invoice is not to be raised for advance payments received for goods or services. The recipient of payment would be required to issue a receipt voucher for receipt of payment in advance.

Q2. Is it mandatory to mention the details of tax amount charged in the invoice?

Ans. Yes, the tax invoice should mandatorily mention the details of tax amount charged.

Q3. Is it possible to take input tax credit based on the 'bill of supply'?

Ans. No, it is not possible to take input tax credit based on the bill of supply.

Q4. Can a revised invoice be issued for taxable supplies?

Ans. Yes, the registered taxable person can issue revised invoice. Every registered 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/ consolidated revised tax invoice 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.

[43][**31A. Facility of digital payment to recipient.**

The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.]

31A.1 Analysis

With a view to increase digital payment, the Government on the recommendation of GST Council shall prescribe a class of registered person who will provide the recipient with an option to make payment through various electronic modes. The recipient can opt any mode of payment as per his choice. The manner of payment and the conditions and restrictions in regard thereto shall be prescribed. Government seems determined to encourage electronic

[43] *Inserted by The Finance (No. 2) Act, 2019 – Brought into force w.e.f. 1st January, 2020 vide Notf. No. 1/2020-CT dt. 01.01.2020.*

modes of payment by this new section. However, no notification in this regard has been issued so far.

E-Invoice

The GST Council, in its 35th meeting held in New Delhi on 21.06.2019, decided to implement a system of e-invoicing, which will be applicable to specified categories of persons. Para 6 of the said press release states:

"6. The Council also decided to introduce electronic invoicing system in a phase-wise manner for B2B transactions. E-invoicing is a rapidly expanding technology which would help taxpayers in backward integration and automation of tax relevant processes. It would also help tax authorities in combating the menace of tax evasion. The Phase 1 is proposed to be voluntary and it shall be rolled out from Jan 2020"

What is E-invoicing?

'E-invoicing' or 'electronic invoicing' is a system where in the supplier will upload his invoice details and register his supply transaction on the Government Invoice Registration Portal (IRP) and get the Invoice Reference Number (IRN) generated by the IRP system. That is, the tax payer will first prepare and generate his invoice using his ERP/accounting system or manual system in the standard e-invoice schema and then upload these invoice details in **Form GST INV-01** to IRP and get the unique reference number, known as IRN. It is clarified again that the **e-invoice does not mean preparation or generation of taxpayer's invoice on Government portal.** It is only intimating the Government portal that invoice has been issued to the buyer, by registering that invoice on the Government portal.

The IRP will act as the central registrar for e-invoicing and its authentication. IRP will validate the key details of the invoice, checks for any duplication, and generates an invoice reference number (IRN), digitally signs the invoice and creates a QR code in Output JSON for the supplier. On the other hand, the seller of the supply will get intimated of the e-invoice generation through email (if provided in the invoice). An e-invoice will be valid only if it has IRN. By digitally signing the invoice, the Government authenticate the genuineness of the invoice submitted/registered by the supplier.

IRP will send the authenticated payload to GST portal for GST returns. Additionally, details will be forwarded to the e-way bill portal, if applicable. ANX-1 of seller and ANX-2 of the buyer will get auto-filled for the relevant tax period.

The basic aim behind adoption of e-invoice system is to reduce the submission of multiple statements and details by the taxpayers and help the purchaser to get the Input tax credit easily.

While the word invoice is used in the name of e-invoice, it covers other documents that will be required to be reported to e-invoice system by the creator of the document:

- Business to Business Invoices
- Business to Government Invoices
- Export Invoices
- Reverse Charged Invoices
- Credit Notes
- Debit Notes

It may be noted that presently the Business to Consumer (B2C) invoices are not allowed for e-invoice/ IRN generation.

Pre-requisite for generation of e-invoice

The pre-requisite for generation of e-invoice is that the person who generates e-invoice should be a registered person on GST portal and e-invoice system or e-way bill system. The documents such as tax invoice or debit note or credit note must be available with the person who is generating the e-invoice. If a user is generating Bulk invoices, then he/she should have a valid JSON file as per the e-invoice schema to upload on the e-invoice system.

The Government has issued the following notifications with respect to e-invoicing:

1) Notification No. 68/2019-CT to 70/2019-CT all dated 13.12.2019
2) Notification No.13/2020-CT dated 21.03.2020
3) Notification No. 61/2020-CT, dated. 30.07.2020
4) Notification No. 73/2020-CT dated 01.10.2020
5) Notification No. 88/2020-CT dated 10.11.2020
6) Notification No. 05/2021-CT dated 08.03.2021
7) Notification No.23/2021-CT dated 01.06.2021
8) Notification No. 10/2023-CT dated 10.05.2023

These notifications are discussed in detail in the ensuing paragraphs:

Notification No. 68/2019-CT dated 13.12.2019 has been issued to insert sub-rules 4, 5 & 6 in rule 48 of CGST Rules, 2017 regarding issuance of e-invoice containing the particulars mentioned in FORM GST INV-01 w.e.f. 13th December 2019.

Rule 48(4) read with *Notification. No. 70/2019-CT dated 13.12.2019* states that effective from 1.4.2020, an e-invoice shall be prepared by such class of registered persons whose aggregate turnover in a financial year exceeds 100 crores rupees in respect of supply of goods or

services or both to a registered person. The above notification is superseded by *Notification No. 13/2020–CT dated 21.03.2020* effective from 01.10.2020 and the aggregate turnover threshold limit was increased to INR 500 Crores vide *Notification. No. 61/2020 – CT dated 30.07.2020*. Further, vide *Notification, No. 73/2020 dated 01.10.2020*, the applicable taxpayers have been given special procedure with a grace period of 30 days for generating an Invoice Reference Number (IRN). However, this grace period was valid for the invoices issued between 1st October 2020 to 31st October 2020 and not relevant any further.

E-invoicing has been implemented in the following staggered manner based on the aggregate turnover threshold:

S. No.	Aggregate turnover exceeding INR	Effective date	Notification reference
1.	500 Crores	01.10.2020	*Notification No.13/2020-CT dated 21.03.2020 and* *Notification No. 61/2020-CT dated. 30.07.2020*
2.	100 Crores	01.01.2021	*Notification No. 88/2020-CT dated 10.11.2020*
3.	50 Crores	01.04.2021	*Notification No. 05/2021-CT dated 08.03.2021*
4.	20 Crores	01.04.2022	*Notification No. 01/2022-CT dated 24.02.2022*
5.	10 Crores	01.10.2022	*Notification No. 17/2022-CT dated 01.08.2022*
6.	5 Crores	01.08.2023	*Notification No. 10/2023-CT dated 10.05.2023*

Following persons have been **excluded** from the requirement of issuing e-invoice:

1. Registered persons referred to in sub-rules (2), (3), (4) and (4A) of rule 54 (*Notification No.13/2020-CT dated 21.03.2020*)
    - Rule 54(2): Insurer or a banking company or a financial institution, including a non-banking financial company.
    - Rule 54(3): Goods Transport Agency (GTA)
    - Rule 54(4): Passenger transportation service provider.
    - Rule 54(4A): Multiplex theatres
2. A Special Economic Zone unit (*Notification. No. 61/2020-CT, dated. 30.07.2020*)
3. A Government department, a local authority (*Notification. No.23/2021-CT dated 01.06.2021*)
4. Persons registered in terms of rule 14 of CGST Rules (OIDAR).

As per rule 48(4), e-invoice shall be prepared including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal.

Latest Updates with regard to E-Invoicing:

- At least 6 digit HSN is mandatory in e-Invoices, for taxpayers whose AATO (Aggregate Annual Turnover) is 5 Cr and above, from 15th of December 2023.
- The taxpayers, notified for generation of e-invoices and supplying to government departments / agencies, need to generate B2B e-Invoices with the GSTIN of the Government department / agency.
- 2-Factor Authentication for all taxpayers with AATO above Rs 20 Cr is mandatory from 20th November 2023.
- With effect from 1st November, 2023, a time limit of 30 days has been imposed for reporting of invoices from date of invoice, on e-invoice portals. This time limit is applicable for taxpayers with AATO greater than or equal to 100 crores. Hence, the taxpayers in this category will not be allowed to report invoices older than 30 days on the date of reporting. This restriction will apply to the all-document types for which IRNs are to be generated. Thus, the Credit / Debit note will also have to be reported within 30 days of issue from date of issue.

Clarification on applicability of e-invoicing w.r.t an entity *[Circular No. 186/18/2022-GST dt. 27.12.2022]*

Q. Whether the exemption from mandatory generation of e-invoices in terms of *Notification No. 13/2020-Central Tax, dated 21st March, 2020*, as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?

A. In terms of *Notification No. 13/2020-Central Tax dated 21.03.2020*, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of rule 48 of Central Goods and Services Tax Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of *Notification No. 13/2020-Central Tax, dated 21st March, 2020*, as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

Rule 48(5) provides that if a registered person with aggregate turnover exceeding Rs. 5 crores in any preceding financial year from 2017-18 onwards issues any invoice other an e-invoice, then such invoice shall not be treated an invoice.

Rule 48(6) provides that the provisions of Rule 48(1) and 48(2) i.e., preparation of invoice in triplicate in case of goods and in duplicate in case of services shall not apply to an e-invoice.

FORM GST INV-01

GST INV-01 is with respect to generation of Invoice Reference Number. [Sub-rule (2) of rule 138A] of the CGST Rules states that 'In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice'.

In FORM GST INV-01, earlier reference to rule 138A was given. However, *Central Goods and Services Tax (Amendment) Rules, 2020* brought in vide *Notification No. 02/2020-CT dated 1.1.2020* and vide para 5 of the said amendment rules, FORM GST INV-01 has been substituted. In the substituted form, reference to rule 138A has been replaced with rule 48 and schema of the form like technical field name, small description, mandatory or optional, technical field specification like max. length, drop down etc. with sample value and explanatory note of the field have been provided.

Clarification on applicability of e-invoice *[Circular No. 198/10/2023-GST dated 17.07.2023]*

Issue: Applicability of e-invoicing where supply is made by a registered person who is required to generate e-invoice, to Government Departments or establishments/ Government agencies/ local authorities/PSUs registered solely for the purpose of deduction of tax at source under section 51 of the CGST Act, 2017.

Clarification: The Government Departments or establishments/Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section51ofthe CGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act, 2017. Hence, they are treated as registered persons as per section 2(94) of the said Act.

Therefore, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc. under rule 48(4) of CGST Rules.

Notification. No. 69/2019-CT dated 13.12.2019 [Effective from 1.1.2020]

The Central Government, on the recommendations of the Council, has notified the following as the Common Goods and Services Tax Electronic Portal for the purpose of preparation of the e-invoice:

(i) www.einvoice1.gst.gov.in;

(ii) www.einvoice2.gst.gov.in;

(iii) www.einvoice3.gst.gov.in;

(iv) www.einvoice4.gst.gov.in;

(v) www.einvoice5.gst.gov.in;

(vi) www.einvoice6.gst.gov.in;

(vii) www.einvoice7.gst.gov.in;

(viii) www.einvoice8.gst.gov.in;

(ix) www.einvoice9.gst.gov.in;

(x) www.einvoice10.gst.gov.in.

Explanation-For the purposes of this notification, the above mentioned websites mean the websites managed by the Goods and Services Tax Network, a company incorporated under the provisions of section 8 of the Companies Act, 2013 (18 of 2013).

Signature or Digital Signature not required on an e-invoice:

Clause (q) of rule 46 requires that a tax invoice should contain signature or digital signature of the supplier or his authorised representative. However, [5th proviso to rule 46 states that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).]

Clarification on carrying physical copy of invoice under rule 48(4) *[Circular No. 160/16/2021-GST dated 20th September, 2021]*

Issue: Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e., in cases of e-invoice).

Clarification:

1. Rule 138A(1) of the CGST Rules, 2017 *inter-alia*, provides that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.
2. Further, rule 138A (2) of CGST Rules, after being amended vide notification No. 72/2020-Central Tax dated 30.09.2020, states that "In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice"
3. A conjoint reading of rules 138A (1) and 138A (2) of CGST Rules, 2017 clearly indicates that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. After amendment, the revised rule 138A (2) states in unambiguous words that whenever e-invoice has been generated, the Quick Reference (QR) code, having an embedded Invoice Reference Number (IRN) in it, may be produced electronically for verification by the proper officer in lieu of the physical copy of such tax invoice.

Accordingly, it is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

Quick Response (QR) Code

Government has added 6th proviso to rule 46 vide *Notification. No. 31/2019 –CT dt. 28.06.2019* which states that the tax invoice shall have Quick Response (QR) code subject to such conditions and restrictions as mentioned therein. This proviso has been made effective from 1.4.2020 vide *Notification. No. 71/2019-CT dated 13.12.2019*. and vide *Notification No. 72/2019-CT dated 13.12.2019* [Effective from 1.4.2020 but deferred to 01.10.2020], afterwards the *Notification No. 72/2019-CT dated 13.12.2019* superseded by *Notification No. 14/2020–Central Tax dated 21-03-2020 and effective from 01.12.2020, it* has been notified that an invoice issued by a registered person to an unregistered person (hereinafter referred to as B2C invoice), shall have Quick Response (QR) code if his aggregate turnover in [44][any preceding financial year from 2017-18 onwards] exceeds 500 crores rupees.

The proviso to the said notification states that where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having QR code.

The above notification has been superseded by *Notification No. 14/2020-CT dated 21.03.2020* (effective from 1.10.2020) whereby the government has made it mandatory that the invoice to be issued as such shall have a Dynamic Quick Response (QR) code except in the following cases:

1. Invoice issued under sub-rules (2), (3), (4) and (4A) of rule 54; and
    a. Rule 54(2): Issue of consolidated tax invoice or any other document in lieu thereof by an insurer or a banking company or a financial institution, including a non-banking financial company.
    b. Rule 54(3): Issue of tax invoice or any other document in lieu thereof by a Goods Transport Agency (GTA)
    c. Rule 54(4): Issue of tax invoice including ticket in any form, by whatever name called, by a passenger transportation service provider.
    d. Rule 54(4A): Issue of an electronic ticket by multiplexes
2. Invoice issued by a registered person referred to in section 14 of the IGST Act.

    Section 14 of the IGST Act refers to special provision for payment of tax by a supplier of online information and database access or retrieval services.

[44] *Substituted vide Notf No. 71/2020–CT dt. 30.09.2020 before it was read as "a financial year".*

The said *Notification No. 14/2020-CT dated 21.03.2020,* has been amended vide *Notification No. 71/2020 – CT dated 30.09.2020* to extend the date of implementation of the Dynamic QR code for B2C invoices to 01.12.2020 instead of 01.10.2020. Also, the same Notification No. 71/2020 provides clarity on the threshold that QR code is applicable if aggregate turnover exceeds INR 500 crores in any preceding financial year from 2017-18 onwards.

Penalty for non-compliance and waiver of the same:

Non-generation of dynamic QR codes for invoices issued by a registered person to unregistered persons with effect from 01.12.2020 by the companies having an annual turnover in excess of ₹500 Crores could now attract penalty of Rs. 50,000 under section 125 of CGST Act, 2017. However, vide *Notification No. 89/2020 – Central Tax dated 29th November, 2020*, Government waived such penalty for non-compliance between the period from 01.12.2020 to 31.03.2021, subject to the condition that the said person complies with the provisions of the said notification from the 01st April, 2021. Such waiver of penalty was further extended until 30th June 2021 subject to compliance from 1st July 2021.

However, in supersession of such conditional waiver of penalty, *Notification No. 28/2021 – Central Tax dated 30th June, 202*1 was issued to grant waiver of penalty for the period from 01.12.2020 to 30.09.2021 unconditionally (without attaching any condition towards subsequent compliance). Accordingly, any non-compliances of QR code compliances would attract general penalty of Rs. 50,000 with effect from 1st Oct 2021.

Meaning of QR Code:

A QR code (short for "quick response" code) is a type of barcode that contains a matrix of dots. It can be scanned using a QR scanner or a smartphone with built-in camera. Once scanned, software on the device converts the dots within the code into numbers or a string of characters. For example, scanning a QR code with your phone might open a URL in your phone's web browser. [**Source:** https://techterms.com/definition/qr_code]

QR code for the URL of the English Wikipedia Mobile main page.



A QR code consists of black squares arranged in a square grid on a white background which can be read by an imaging device such as a camera. QR codes are used over a much wider range of applications. These include commercial tracking, entertainment and transport ticketing, product and loyalty marketing, in-store product labeling etc.

Dynamic QR code

A dynamic QR code is a type of QR code that is editable, as opposed to a static QR code which isn't editable. Dynamic QR codes also allow for additional features like scan analytics, password protection, device-based redirection and access management.

Static vs. Dynamic QR Code:

- *Static QR Code:* The actual destination website URL is placed directly into the QR code and can't be modified.
- *Dynamic QR Code:* A short URL is placed into the QR code which then transparently re-directs the user to the intended destination website URL, with the short URL redirection destination URL able to be changed after the QR code has been created.

Circulars providing clarifications on QR code:

A. *Circular no. 146/02/2021-GST dated 23rd February 2021-Clarification in respect of applicability of Dynamic QR code on B2C invoices and compliance of Notification No. 14/2020-CT dt. 21st March, 2020*

1. *Issue 1:* To which invoice is *Notification No 14/2020- Central Tax dated 21st March, 2020* applicable? Would this requirement be applicable on invoices issued for supplies made for Exports?

   Clarification 1: This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases:

   I. Where the supplier of taxable service is:

      a) an insurer or a banking company or a financial institution, including a non-banking financial company;

      b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;

      c) supplying passenger transportation service;

      d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens

   II. OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person.

As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of *Notification no. 13/2020-Central Tax, dated 21st March, 2020* treating them as Business to Business (B2B) supplies, *Notification no. 14/2020- Central Tax dated 21st March, 2020* will not be applicable to them.

2. *Issue 2:* What parameters/ details are required to be captured in the Quick Response (QR) Code?

   Clarification 2: Dynamic QR Code, in terms of *Notification No. 14/2020-Central Tax, dated 21st March, 2020* is required, inter-alia, to contain the following information:

   I. Supplier GSTIN number

   II. Supplier UPI ID

   III. Payee's Bank A/C number and IFSC

   IV. Invoice number & invoice date,

   V. Total Invoice Value and vi. GST amount along with breakup i.e., CGST, SGST, IGST, CESS, etc.

   Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.

3. *Issue 3*: If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice?

   Clarification 3: If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: -

   I. Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice; or

   II. In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash, along with date of such payment on the invoice;

   The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.

4. *Issue 4*: If the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer-based applications, where though Dynamic QR Code is not

displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?

*Clarification 4***:** In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

5. *Issue 5***:** Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre- paid invoices i.e., where payment has been made before issuance of the invoice?

   *Clarification 5***:** If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code. In cases other than pre-paid supply i.e., where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

6. *Issue 6*: Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?

   *Clarification 6***:** The provisions of the notification shall apply to each supplier/registered person separately if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the E-commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e., where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

B. Circular no. 156/12/2021-GST dated 21st June 2021 - Circular No. 146/2/2021-GST, dated 23.02.2021 stands modified to this extent.

1. *Issue 1***:** Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number as per the provisions of sub-section 9 of section 25 of CGST Act 2017?

   Clarification 1: Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of sub-section 9 of section 25 of CGST Act 2017, is not a "registered person" as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.

2. *Issue 2*: UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?

   Clarification 2: Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code.

3. *Issue 3*: In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?

   Clarification 3: Yes. In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier.

4. *Issue 4*: In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?

   Clarification 4: No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

5. *Query 5*: In some instances of retail sales over the counter, the payment from the customer in received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e., receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.

   Clarification 5: In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/

unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.

6. *Query 6:* When part-payment has already been received by the merchant/ supplier, either in advance or by adjustment (e.g., using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for "invoice value"?

   Clarification 6: The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in respect of the said supply. When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value". The details of total invoice value, along with details/ cross reference of the part payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.

C. *Circular No. 160/16/2021-GST dated 20th September, 2021 – Clarification on carrying physical copy of invoice under Rule 48(4)*

Issue 2: Whether carrying a physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e., in cases of e-invoice).

Clarification 2: (4) It is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

D. *Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices*

Circular No. 165/21/2021-GST dt. 17.11.2021 has amended *Circular No. 156/12/2021-GST dt. 21.06.2021* issued to provide clarifications in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of *Notification 14/2020 CT dt. 21.03.2020.*

S. No. 4 of *Circular No. 156/12/2021* clarified that wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act, 2017, and the payment is received by the supplier **in foreign currency**, through RBI approved mediums, such invoice may be

issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier

The wordings of S. No. 4 of *Circular No. 156/12/2021* created doubt as to whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but **not** in foreign exchange. It has been clarified vide *Circular No. 165/21/2021* that the intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in those cases, where the payment is received by the supplier as per any RBI approved mode, other than foreign exchange.

S. No. 4 of *Circular No. 156/12/2021* has been substituted vide *Circular No. 165/21/2021* to clarify that dynamic QR code is not required on the invoice issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act, 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees, wherever permitted by the RBI. This is so because such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Statutory Provisions

32. Prohibition of unauthorised collection of tax

(1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

(2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

32.1 Analysis

Collection of tax is not a statutory right but a contractual remedy. Right to collect tax must flow from the contract. If the contract is silent, the customer is under no obligation to pay tax to the supplier. However, the Government will demand payment of tax from supplier being the 'taxable person' stated in section 9(1). Reference may be had to the decision in the case of *Chotabhai Jethabhai & Co., v. UOI 1962 AIR 1006 (SC)* where this principle has been well laid down. As such, no recipient is obliged by law to reimburse the supplier taxes due on the supply except by contract. At the same time, every taxable person (in case of forward charge) remains liable to deposit the applicable tax to the Government.

This provision casts an obligation on each unregistered person and registered person with regard to collection of tax on supply:

— unregistered person is not to collect any amount 'by way of' tax; and

— registered person is to collect tax only in accordance with the provisions of the Act and the Rules.

It is important to differentiate between the restriction placed by this provision and the contractual route necessary to recoup tax by the supplier. Only tax that is collected as 'CGST'

or 'IGST' or 'SGST/UTGST' is to be paid to the Government. Any other loss, recoupment of input tax credit 'foregone or forfeited' does not fall within this restriction.

A question that arises for consideration is, if taxes that are not applicable are collected by taxable person from his customer, whether such amounts (purported to be tax) is to be paid to the Government and will it be lawful for the Government to retain such amounts knowing that it is not 'tax'. Reference may be had to *RS Joshi, STO, Gujarat v. Ajit Mills & Anr. 1977 (40) STC 497 (SC)* where it was first laid down that the law that is applicable to the taxpayer is the same law that is applicable to the tax administrator. And if tax is not lawfully leviable, then the same is not lawfully collectible by the Government. That is, if tax levied is not lawful, its collection cannot be any more lawful. This was derived from art. 265 and 300A of our Constitution. It is to overcome this jurisprudence that Parliament has laid down provision like section 32 that first places this embargo on the taxpayers from collecting any amount that is not lawfully leviable as tax, from customers. Then in *Mafatlal Industries Ltd & Ords v. UoI & Ors. 1997 (89) ELT 247 (SC),* it was laid down that where it comes to choose between the State (Government) and the subject (taxpayer) to retain unlawful collection of (inapplicable) taxes, the Hon'ble SC voted in favour of the State to retain such amounts as it would ultimately be utilized for the benefits of citizens and the State (Government) is in the position of *parens patria* and concept of unjust enrichment against the State does not apply.

Section 32 of CGST Act, 2017 provides for unauthorised collection of tax but if the same has been collected and not paid to the government, then section 76 provides that notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, such amount shall forthwith be paid to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not. Further, such person shall also be liable to pay interest and penalty thereon.

Unregistered person should first create a user ID and then a challan using that user ID for making payment.

Steps to create user ID:

- Go to https://www.gst.gov.in
- Click on Services>User Services>generate user ID for unregistered applicant
- Follow the steps mentioned there.

Steps to create challan for making payment:

- Go to https://www.gst.gov.in
- Click Services > Payment > Create Challan.
- Follow the steps mentioned there.

Section 76(11) further provides that the person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Statutory Provisions

> ***33. 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 shall form part of the price at which such supply is made.*

33.1 Analysis

With the non-obstante clause, this provision secures preference over any other provision to the contrary whether in this Act or elsewhere. It states that in all documents, tax amount which shall form part of the price of supply shall prominently be indicated.

This provision therefore holds the price charged to be the 'cum tax' price of the supply. Tax included in the price is that *actually assessed* on the supply.

It means that if the supply price is ₹1000/- which is inclusive of tax then every document must state that "the price of ₹1000 includes – say IGST of ₹180/- or alternatively say supply price is ₹ 820 and IGST ₹180 total ₹1000.

The GST law presupposes the fact that the tax, even if not charged is deemed to have been passed on to the recipient unless proved contrary. If 'tax is charged' then the same is to be indicated on the tax invoice as is also required under rule 46(m). As a result, any claim of 'cum tax' computation when demands are being raised, the same will NOT be supported if tax invoice does not contain the amount of tax. Unlike in earlier tax regime, where it was held in *CCE, New Delhi v. Maruti Udyog Ltd. 2002 (141) ELT 3* that total price charged is presumed to include any duty that is collectable and 'back working' must be allowed to arrive at 'net duty'. GST law seems to disturb this principle by making an expression provision in this section 33 that amount that is purported to be tax must appear explicitly on the tax invoice. As a result, if tax is NOT indicated on the tax invoice, then the entire amount indicated on the tax invoice will be treated to be 'ex tax' as a complete departure from Maruti's decision (cited above). In this context, it is important to refer to rule 35 which states that where value of supply is inclusive of integrated tax, or as the case may, Central tax, State tax, Union Territory tax, the tax amount shall be determined by 'reverse calculation'.

Hence, where price charged is 'cum tax' price of the supply, then the tax amount should be arrived at as per rule 35 and such tax amount should be indicated in the tax invoice [as also required under rule 46(m)] and other documents as envisaged under this section.

In case goods marked with "MRP" are sold at such MRP itself, then would it mean that (i) if tax is applicable on outward supply, then such tax amount is also included in the MRP amount

and sales at MRP tantamount to the amount of output tax being collected from customer or (ii) sale at MRP only means, tax on outward supply is to the account of seller and NOT collected from customer. Experts are of the view that Courts will be busy answering these questions in the case of MRP articles sold 'at MRP' (without mentioning tax amount in tax invoice) due to the departure from the principle in Maruti's decision that seems visible in GST law. Reference may also be had to the implications of exempt supplies and suppliers under composition selling "MRP goods at MRP" and their potential disqualification under section 10(2).

Statutory Provisions

34. Credit and debit notes

(1) *[45][Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient [46][one or more credit notes for supplies made in a financial year] containing such particulars as may be prescribed.*

(2) *Any registered person who issues a credit note in relation to a supply of goods or services or both 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~~ the thirtieth day of November][47] following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:*

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) *[48][Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the*

[45] Substituted vide the Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. Before it read as "Where a tax invoice has".

[46] Substituted vide the Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. Before it read as "a credit note".

[47] Substituted vide The Finance Act, 2022 through Notf. No. 18/2022-CT dt. 28.09.2022

[48] Substituted vide the Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. before it was read as "Where a tax invoice has"

registered person, who has supplied such goods or services or both, shall issue to the recipient [49][one or more debit notes for supplies made in a financial year] containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both 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 such manner as may be prescribed.

Explanation. – For the purposes of this Act, the expression ''debit note'' shall include a supplementary invoice.

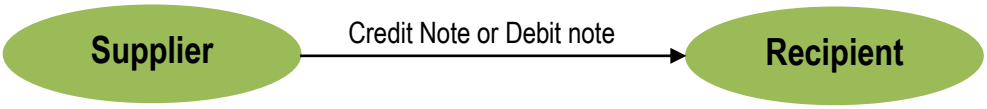
Related provisions of the Statute

Section or Rule	Description
Section 2(37)	Definition of 'Credit Note'
Section 2(38)	Definition of 'Debit Note'
Rule 53	Revised tax invoice and credit or debit notes
Section 15	Value of taxable supply
Section 31	Tax invoice
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
Section 129	Detention, seizure and release of goods and conveyances in transit
Section 130	Confiscation of goods or conveyances and levy of penalty

34.1 Introduction

To begin with, one must fully unlearn the practices under the erstwhile law in order to clearly understand the concepts of credit note and debit note under the GST Law. A credit note or a debit note, for the purpose of the GST Law, can be issued by the registered person who has issued a tax invoice, i.e., the supplier. Any such document, by whatever name called, when issued by the recipient to the registered supplier, is not a document recognized under the GST Law. Sections 34(1) & (2) of the Act deals with Credit Note and sections 34(3) & 34(4) deals with Debit note.

[49] *Substituted vide the Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. before it was read as "a debit note"*



34.2 Analysis

(i) Credit note and debit note cause some hardship to quickly understand – who owes whom? Credit note is issued when the issuer 'OWES' money to someone, that is, it is issued by the person who owes money. Debit note is issued when any money is 'OWED' to the issuer, that is, it is again issued by the person who is the receiver of money.

a. When a cash discount is allowed at the time of collecting payment from a customer in terms of an agreement entered into prior to the supply, then the supplier would issue a credit note to the customer to the extent of such cash discount, to declare that he 'OWES' money. Then, the original amount due MINUS the credit note amount is the revised value of supply that the customer pays the supplier. To this extent, the GST thereon would also stand reduced, subject to conditions which have been discussed in the subsequent paragraphs.

b. Now, if the supplier charges a penalty for delayed payment of consideration, the supplier would issue a debit note for the amount of penalty, to the customer to declare that money is 'OWED' to the supplier. Then, the original amount due PLUS the debit note is the revised value of supply, that the customer pays the supplier. To this extent the GST thereon would also stand increased.

(ii) The conditions applicable on an issue of credit note are listed below:

a. The supplier may issue one or more credit notes for supplies made in a financial year through one or more tax invoices which have been issued by him earlier;

b. The credit notes so issued must be declared by the supplier in return for the month in which they are issued. However, maximum time limit for making such declaration is the earlier of the following two:

1. The date of furnishing of the relevant Annual return; or
2. 30th of November immediately succeeding the FY in which such supply was made.

c. The recipient, on declaring the same, must claim a reduction in his input tax credit if the same had been availed against the original tax invoice;

d. A credit note cannot be issued if the incidence of tax and interest on such supply has been passed by him to any other person;

e. Every credit note must be linked to specific original tax invoice(s);

f. It is important to remember that there cannot be a bunching of two financial years for issue of a credit note. So, for a tax invoice issued in March 2019 and another

issued in June, 2019, a single credit note cannot be issued against both the invoices.

g. In case of a credit note issued for a discount, the discount must be provided in terms of an agreement entered into before or at the time of supply, as provided in clause (i) of section 15(3) (b) of the Act.

h. The GST Law provides an exhaustive list of situations under which the registered supplier is entitled to issue a credit note saying, 'I OWE' and issues credit note:

1. Actual value of supply is lower than that stated in the original tax invoice;
2. Tax charged in the original tax invoice is higher than that applicable on the supply;
3. Goods supplied are returned by the recipient;
4. Goods or services supplied are deficient.

i. The credit note contains all the applicable particulars as specified in rule 53(1A) of the CGST Rules, 2017.

(iii) The GST Law mandates that a registered supplier may issue one or more debit notes for supplies made in a financial year through one or more tax invoices which has been issued by him earlier under the following circumstances:

a. Actual value of supply is higher than that stated in the original tax invoice;

b. Tax charged in the original tax invoice is lower than that applicable on the supply;

c. The debit note needs to be linked to the original tax invoice(s);

d. The debit note contains all the applicable particulars as specified in rule 53(1A) of the CGST Rules, 2017;

e. A debit note issued under sections 74, 129 or 130 would not entitle the recipient to avail credit in respect thereof as blocked through section 17(5)(i) and the supplier shall specify prominently, on such debit note the words "INPUT TAX CREDIT NOT ADMISSIBLE"; as provided in rule 53(3).

f. It is important to remember here that unlike in the case of credit note, there is no time limit for declaration of the details of debit note in the return. As such, a debit note in relation to a supply made in a financial year can be issued at any time. On the other hand, a credit note can be issued only till 30th November (w.e.f. 01.10.2022) following the end of the financial year in which supply related to such credit note was made assuming annual return is filed after such date.

(iv) Except in the circumstances specified, credit note or debit note is not permitted to be issued merely because a financial adjustment is required to be made in respect of the receivable or payable. Please note that any credit note / debit note not issued in terms of section 34 would not be a valid document under the GST Law. For instance, if a credit note has been issued in respect of goods returned after the due date for credit

note, a credit note may be issued by the supplier for reduction in the amount payable by the recipient. However, he cannot declare such credit note in his return and claim a reduction in tax liability. On the other hand, the recipient of tax may be impelled to reverse the input tax credit that had been availed thereon. This position of law is also clarified vide *Circular 72/46/2018 dated 26.10.18* (issued with respect to time expired drugs or medicines) wherein it is clarified that for claiming the reduction in output tax liability in case of return of goods (whether the goods have been expired or otherwise), the credit note should have been issued within the time limit specified under section 34(2). It is further clarified that any credit notes issued after expiry of time limit specified under section 34(2), there is no requirement to declare such credit note on the common portal by the supplier as tax liability cannot be adjusted in such case.

(v) Review the circumstance for issuing credit note. As per *Circular No. 72/46/2018 dated 26.10.2018*, there is no time limit to issue credit note but only for effecting 'tax adjustment'. Credit note, where tax adjustment is not involved need not even be filed on the portal as per this Circular. Further, on review of table 5E and 5J of GSTR 9C, it is evident that such credit notes will suffer tax without any relief to recipient by way of tax adjustment.

(vi) Credit note (and to a lesser extent, debit note) under section 34 must be contrasted with financial credit note issued in trade. Above Circular No. 72 along with *Circular No. 92/11/2019-GST dated 7th Mar 2019* makes it clear that (a) financial credit notes are extant practices in trade and (b) if tax adjustment is NOT made, then such credit notes are NOT to be reported in GSTR 1. It is important to recognize that credit notes (and even debit notes) are issued to record a bilateral agreement where treatment of credit note in issuer-suppliers' books (and GST records) must be mirrored in the recipient-customers' books (and GST records). It would be worrisome if issuer-supplier accounts the financial credit note as expenditure (in other words, an inward supply) but the recipient-customer accounts the same as reduction from cost of purchase. Experts caution against taking this issue lightly particularly when post-supply transactions are riddled with different interpretations of contractual understanding and applied to GST. Another view laid down some interesting and fundamental Contract law principles but was withdrawn *ab initio* through *Circular No. 112/31/2019-GST dated 3.10.2019* (by 37th GST Council decision) without stating whether those principles were applicable to GST or not or the circular was erroneous due to certain reasons.

(vii) Credit notes are also issued for accounting any unilateral treatment such as write-off of bad debts, etc., Therefore, care must be taken to identify (a) whether the CN-DN are to reflect a bilateral arrangement or unilateral arrangement (b) whether such CN-DN is harmoniously reflected in both parties books (and GST records) or not (c) whether such CN-DN are a reflection of pre-supply understanding with a contingency or a post-supply understanding reached subsequently (d) whether such CN-DN is a traditional document issued when in fact a tax invoice (from the other party) ought to be issued and (e)

whether CN-DN is 'earned' by any activity by the recipient or is an 'entitlement' that is admitted subsequently. GST treatment will greatly vary based on the answers to these questions.

(viii) Care must be taken to examine the 'time of supply' applicable to debit note as amount additionally claimed by supplier is not another supply but additional consideration towards original supply. To expect that additional consideration must enjoy a new time of supply would run counter to the only exception that can be found in section 12(6) / 13(6) where time of supply is shifted to 'realization date'. Although debit note is issued in *bona fide* cases, there is no provision in law that admits 'shifting' of time of supply specially for 'debit notes'. Refer related discussion in the context of 'special charges' in the chapter on time of supply under section 12(6) relating to effect of issuance of debit note after a certain interval of time.

Support can also be found by comparison with section 19(3) where non-return of inputs by job-worker clearly attracts interest liability from the original date of dispatch of inputs as that is the date the non-returned inputs are 'deemed' to be supplied. Whereas non-return of goods sent on-approval under section 31(7) is 'treated' to be supplied on the date of expiry of six months. So, any 'shifting' of time of supply (and hence implications on interest) has been expressly provided by law in number of sister provisions and when there is no express 'shifting' for debit notes, 'artificial shifting' seems to be a misadventure in interpretation of this law.

(ix) CBIC *Circular No. 137/07/2020-GST dated 13th April 2020* issued certain clarifications on advance receipt, cancellation of contract, credit notes, refund voucher, etc., which is relevant not only in the context of **COVID-19** economic slowdown, but also otherwise in the normal course of any business. Relevant extracts as below:

Issue 1: An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

Clarification 1: In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

Issue 2: An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?

Clarification 2: In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules.

The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".

Issue 3: Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

Clarification 3: In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

34.3 Issues and concerns

1. It is a common practice of trade and industry to issue volume discounts / turnover discounts, at the end of a certain period, say a financial year. Clearly, such discounts cannot be provided at the time of supply to reflect the same on the tax invoice. On the other hand, although the discount is a post-supply discount which is established in terms of an agreement entered into before or at the time of supply, the discount cannot be specifically linked to any one invoice. By virtue of this drawback, discounts of such nature would not permit the supplier to claim a reduction in his output tax liability. However, to redress this issue, the Central Goods and Services Tax (Amendment) Act, 2018 with effect from 1.2.2019 provides for the issuance of one or more credit notes or debit notes against multiple supplies in a financial year.

2. The GST Law has not provided a scenario whereby a supplier forgoes a certain part of consideration, in full and final settlement of the dues from a recipient, even where such a reduction can be identified with a specific invoice. In other words, the supplier would be required to issue a tax invoice for the agreed value and discharge tax on the whole value, while he collects only a part payment thereof from the recipient and would not be

permitted to reduce his output tax liability, since the reduction is not on account of a deficiency in service / goods. Given this anomaly, a reasonable inference can be drawn to say that the reduction is on account of reduction in the value of supply, being the reduction in the amount of consideration received, wherein "price is in fact the sole consideration". The tax department in such a situation could – (a) Resort to reverse the input tax credit on a pro-rata basis and (b) subject the value of the said credit note to output tax. It is also important to note that if the tax department resorts to such action, the recipient too would not be in a position to avail any credits of such tax paid at a later point in time. It will not be out of place to mention that the recipient, in any event, will be subject to reversal of input tax credit to the extent he does not affect payment to the supplier against the original invoice by virtue of the provisions of Section 16(2) of the CGST Act, 2017 however, experts believe that non-payment of invoice amount is not the same as accounting-adjustment of invoice amount by netting-off with financial or other credit notes.

34.4 FAQs

Q1. Can credit notes/debit notes be raised without raising an appropriate tax invoice?

Ans. No, credit notes/debit notes have to be raised with reference to specific invoice and not otherwise to get the benefit of tax adjustment.

Q2. Is it mandatory to show the details of credit/debit notes in the periodic returns?

Ans. Yes, the details of debit note and credit note is required to be mentioned in periodic returns. If not shown, it is not considered for adjustment of tax liability.

Q3. Are there any situations where credit note cannot be issued?

Ans. Amongst others, a credit note cannot be issued if the incidence of tax and interest on such supply has been passed by the taxpayer to any other person.

Q4. Can a supplier who has wrongly charged tax at 18% instead of 12% subsequently issue a credit note only to the extent of the excess tax charged?

Ans. Yes, a credit note can be issued only towards the excess tax charged in an invoice.

34.5 MCQ

Q1. What is the last date by which you need to issue credit note?

(a) On or before November 30, following the end of financial year

(b) The date of filing of the relevant annual return

(c) Earlier of the two dates mentioned in (a) and (b) above

(d) None of the above

Ans. (c) Earlier of the two dates mentioned in (a) and (b) above

Chapter 9
Accounts and Records

Sections	Rules
35. Accounts and other records 36. Period of retention of accounts	56. Maintenance of accounts by registered persons 57. Generation and maintenance of electronic records 58. Records to be maintained by owner or operator of godown or warehouse and transporters

Statutory Provisions

35. Accounts and other records

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

(a) production or manufacture of goods;

(b) inward and outward supply of goods or services or both;

(c) stock of goods;

(d) input tax credit availed;

(e) output tax payable and paid; and

(f) such other particulars as may be prescribed:

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:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

(4) Where the Commissioner considers that any class of taxable person 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.

(5) [1][~~Every registered 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 a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.~~

~~Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force~~].

(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Extract of the CGST Rules, 2017

56. Maintenance of accounts by registered persons

(1) Every registered person shall keep and maintain, in addition to the particulars mentioned in sub-section (1) of section 35, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.

(2) Every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

[1] *Omitted vide The Finance Act, 2021 w.e.f. 01.08.2021 through Notf. No. 29/2021-CT dt. 30.07.2021.*

(3) Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

(4) Every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of section 9), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

(5) Every registered person shall keep the particulars of -

(a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;

(b) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;

(c) the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

(6) If any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.

(7) Every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.

(8) Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

(9) Each volume of books of account maintained manually by the registered person shall be serially numbered.

(10) Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

(11) Every agent referred to in clause (5) of section 2 shall maintain accounts depicting the,-

(a) *particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;*

(b) *particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;*

(c) *particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;*

(d) *details of accounts furnished to every principal; and*

(e) *tax paid on receipts or on supply of goods or services effected on behalf of every principal.*

(12) Every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

(13) Every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

(14) Every registered person executing works contract shall keep separate accounts for works contract showing -

(a) *the names and addresses of the persons on whose behalf the works contract is executed;*

(b) *description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;*

(c) *description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;*

(d) *the details of payment received in respect of each works contract; and*

(e) *the names and addresses of suppliers from whom he received goods or services.*

(15) The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

(16) Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

(17) *Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.*

(18) *Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.*

57. Generation and maintenance of electronic records

(1) *Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.*

(2) *The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.*

(3) *Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.*

58. Records to be maintained by owner or operator of godown or warehouse and transporters

(1) *Every person required to maintain records and accounts in accordance with the provisions of sub-section (2) of section 35, if not already registered under the Act, shall submit the details regarding his business electronically on the common portal in FORM GST ENR-01,either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details furnished, a unique enrolment number shall be generated and communicated to the said person.*

[2]*[(1A) For the purposes of Chapter XVI of these rules, a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his Goods and Services Tax Identification Numbers, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter:*

Provided that where the said transporter has obtained a unique common enrolment

[2] *Inserted vide Notf. No. 28/2018-CT dt. 19.06.2018*

number, he shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI.]

(2) The person enrolled under sub-rule (1) as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union territory.

(3) Every person who is enrolled under sub-rule (1) shall, where required, amend the details furnished in FORM GST ENR-01 electronically on the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(4) Subject to the provisions of rule 56,-

(a) any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with the Goods and Services Tax Identification Number of the registered consigner and consignee for each of his branches.

(b) every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods.

(5) The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

Related provisions of the Statute

Section or Rule	Description
Section 2(94)	Definition of 'Registered Person'
Section 2(85)	Definition of 'Place of business'
Section 2(89)	Definition of the term 'Principal place of business'
Section 36	Period of retention of accounts
Section 44	Annual Return
Section 108(6)	Definition of the term 'records'
Rule 80	Annual Return
Rule 56	Maintenance of accounts by registered persons
Rule 57	Generation and maintenance of electronic records
Rule 58	Records to be maintained by owner or operator of godown or warehouse and transporters

35.1 Introduction

This section mandates the upkeep and maintenance of records, at the place(s) of business, in electronic or other forms. Furnishing of reconciliation statement is also contemplated for registered persons having turnover exceeding the prescribed limit. There is no relaxation provided to persons who have voluntarily obtained registration. This section read with relevant rules provides for the manner and method of maintenance of records of all kinds and classes of persons, as well.

35.2 Analysis

(i) The terms, "books" and "accounts" are not defined in the Act. The general meaning attached to this has to be considered. The only section states about "records" is section 108(6) which is applicable to that section only.

(ii) The importance of maintenance of books and records need no emphasis. It is presumed that all business entities would be aware of the nature of books and records to be maintained. However, it is important to note that the GST Law is a devil in details. It means that there is a lot of emphasis placed on primary and secondary books and records. There is no need to stress on the relevance or importance of maintenance of such records, since it is common in the digital world for businesses to maintain such books and records electronically. Having said that, one must bear in mind the importance of maintaining the primary book or record of entry that would have evidentiary value.

(iii) This section emphasises "true and correct" account meaning – the concept of materiality is largely given the go-bye. Tax authorities would go by the actual records maintained and would not place much reliance on the concept of materiality.

(iv) Every registered person is required to keep and maintain accounts and records that reflects the true and correct account of the transactions effected. In other words, separate accounts shall be required to be maintained by a single person, in respect of each of the GSTINs operative during the year reflecting the following details:

- Production / manufacture of goods;
- Inward and outward supply of goods or services or both;
- Stock records of goods;
- Input tax credit availed, output tax payable and paid; and
- Such other particulars as may be prescribed in this behalf.

(v) The accounts are to be maintained at the principal place of business (as mentioned in the certificate of registration). In case of multiple places of business (as specified in the certificate of registration), the accounts relating to each place of business shall be kept at the respective places of business concerned. Where records are maintained

manually, all records pertaining to the operations at every place of business shall be maintained at such place of business.

(vi) The registered person has the option to keep and maintain accounts and other records in electronic form. In such a case, the records shall be authenticated by way of digital signature. Additionally, the GST Law mandates that a proper electronic back-up is maintained and preserved where accounts are maintained electronically, to restore information in the event of its destruction, within a reasonable period of time.

(vii) It is important to note that in respect of quantitative information, the 'unit of measurement' must be such that the actual units used for procurement and supply can be determined or computed. For example, in case goods are procured in 'square meters' and they are supplied in 'square feet', the accounts for the stock of goods must be maintained in either sq.mt. or sq. ft., or a conversion-ratio must be applied so as to extract information in terms of one of the units. The processing or other losses, if any, may be written off – however, input tax credit if any, involved in such written off value or reduction in inputs would **not** require a reversal for the reason that section 17(5)(h) requires reversal of input tax credit for "goods lost" and not "loss of goods" during process or manufacturing. A loss that is occasioned by consumption in the process of manufacture is the one which is inherent to the process of manufacture itself, hence, no ITC reversal is required, however, abnormal losses caused by external factors requires to be looked into with great caution. In case of any increase, the value may be ignored, given that the increase does not result in additional pay-out to the supplier.

(viii) The Commissioner is empowered to:

(a) Notify a class of taxable persons to maintain additional accounts or documents for specified purpose – *No notification has been issued in this regard as of date*.

(b) Permit a class of taxable persons to maintain the records in any other manner – If he believes that they are not in a position to keep and maintain accounts in accordance with this section.

(ix) There is no standalone section that requires a registered person to get his accounts audited by a chartered accountant or a cost accountant. It was specified in section 35(5) of the Act, that, to the extent every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited. However, it may be noted that this section 35(5) has been omitted in the Finance Act 2021 with effect from 01st August, 2021.

(a) Rule 80(3) of the CGST Rules speaks of the prescribed threshold limit at exceeding Rs. 5 Crore which is attributed to the 'aggregate turnover'.

(b) The registered person is required to make the following submissions to the proper officer:

(i) the annual return for the financial year;

(ii) a self-certified reconciliation statement u/s 44(1), reconciling the value of supplies declared in the annual return with the audited annual financial statement, and

(iii) other particulars as may be prescribed.

Note: No other documents have been prescribed in this regard as of date. The details that may be sought for, may be an extract of any of the records / documents which are required to be maintained under this section.

(c) The annual returns for the financial year 2020-2021 in FORM GSTR 9 or reconciliation statement in FORM GSTR 9C shall be furnished on or before the twenty-eighth day of February, 2022 vide *Notification No. 40/2021-CT dated 29.12.2021.*

(d) As per the Central Goods and Services Tax (Eighth Removal of Difficulties) Order, 2019 vide *Order No. 08/2019-Central Tax dated 14-11-2019*, the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 31st January, 2020. Date 31st January, 2020 was substituted by the Central Goods and Services Tax (Tenth Removal of Difficulties) Order, 2019, vide Order No. 10/2019-Central Tax, dated 26-12-2019 for "31st December, 2019". Further, the date has been again extended till 5th February, 2020 for registered persons whose principal place of business is in Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand and till 7th February, 2020 for registered persons whose principal place of business is in Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim, Telangana, Tripura, West Bengal, Other Territory. The annual return for the period 1st April, 2018 to 31st March, 2019 shall be furnished on or before the 31st December, 2020.

(x) The following checks / approach may be adopted for the purpose of ensuring comprehensiveness in reporting or for the purpose of preparation of reconciliation statement u/s 44(1):

(a) Inward supplies: Every inward supply effected by a registered person shall be one of the following:

- ✓ Appear in the details for inward supplies (including the effect of debit / credit notes received) furnished in the returns, (including cases of exchange, barter, deemed supply such as agency transactions, etc.) while the details may be of:

(1) Eligible credits – including partly ineligible credits which are reversed to the extent ineligible;

(2) Ineligible credits.

- ✓ Appear as exempt / nil rated / non-taxable inward supplies; or
- ✓ Appear as inward supplies from composition suppliers; or
- ✓ Not reported for any of the following reasons:

(1) It is neither a supply of goods nor a supply of services (such as salary paid to employees); or

(2) It is an inward supply received from a registered supplier wherein the supplier is unaware of the fact that the supply is made to a registered person (i.e., where the supplier reports the transaction as part of summary details under B2C supplies in his GST returns) – e.g., food bills, etc.

(3) It is an accounting entry made in the books of account by virtue of a requirement under another statute – such as provision for accrued expenses, depreciation, bad debts written-off, debit / credit notes issued in the capacity of a recipient, etc.

Note: Every inward supply that is eligible for credit shall form part of detailed entries (invoice-level information) in Form GSTR-1 of any registered supplier, except in the case of inward supplies liable to tax on reverse charge basis.

(b) Outward supplies: Every outward supply effected by the registered person would need to appear in the returns for outward supplies where:

- ✓ Every taxable outward supply that is effected to a registered person shall be reported at invoice level, including:

(1) Credit notes having a reduction in taxable value / tax, unless the same is time-barred under the GST Laws;

(2) Debit notes issued for increase in taxable value / tax;

(3) The value of expenses incurred by the recipient, although liable to be incurred by the registered person as a supplier, the value of incidental expenses such as delivery charges, etc. and any other amount liable to be included in the value of supply in terms of Section 15(2) of the CGST Act, 2017;

(4) The value determined under the valuation rules, where the price is not the sole consideration for the supply, or where the supply is made to a related person, is to be reckoned for these purposes;

(5) Transactions regarded as supply despite lacking consideration (i.e., activities specified under Schedule I);

- ✓ Summary details to be reported in case of supply of exempted / nil-rated / non-taxable outward supplies and supplies to unregistered persons.

(xi) It is clarified vide *Circular No. 47/21/2018-GST dated 08.06.2018* that the persons involved in auction either as a principal or auctioneer shall declare warehouse or other places as additional place of business in case such places are meant for storage of goods. The principal and the auctioneer shall also maintain the books of accounts in terms of section 35(1) at such places. However, it is clarified that the books of accounts may be maintained at the principal place of business in case of any difficulties faced in maintaining the books of accounts at such additional place of business upon intimating the jurisdictional officer in writing.

(xii) It is also clarified vide *Circular No. 61/35/2018-GST dated 04.09.2018* that in case of storing of goods in godown of transporter, the transporter's godown has to be declared as an additional place of business by the recipient. The transporter and recipient shall maintain the books of account in terms of section 35 at such places. However, it is clarified that books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's additional place of business) by the recipient taxpayer may be maintained by him at his principal place of business.

(xiii) Special attention is required in cases of reversal of input tax credit availed, as provided under section 16(2), section 17(2) or section 17(5)(h) – Where goods are lost, stolen, destroyed, written off, or disposed of as gifts or free samples, proportionate input tax credit should be reversed.

(xiv) It is very important to note that there are serious repercussions where a registered person fails to account for goods or services or both in accordance with the provisions of section 35(1). Section 35(6) creates a deeming fiction that in case of failure to account for goods or services or both, it shall be deemed that such goods or services or both have been "supplied" by such person and the provisions of section 73 or section 74 as the case may be, shall, mutatis mutandis, apply for determination of tax. This provision is a major weapon in the hands of GST officials during search proceedings conducted under section 67. If they arrive at shortage or excess in physical stock *vis-a-vis* stock as per books, they will determine tax on such short or excess stock as per provisions of section 73 or 74, as the case may be. In case, physical stock is short in comparison to stock as per books, GST Department may presume that goods have been supplied "out of books" and in case physical stock exceeds the stock as per books then Department may presume that goods have been received "out of books" and deeming fiction created by section 35(6) authorise them to do so.

(xv) Note: During search under section 67, GST authorities resort to confiscation of goods as per section 130, if they determine that there is some "excess stock" in comparison to

books of account of a taxable person, however, one must consider that some important conditions are prescribed which must be strictly observed before resorting to such extreme step, which are:

(a) "Intent to evade tax" is *sine qua non* to invoke the power to confiscate, mere non recording of goods in books alone can authorise confiscation.

(b) Under section 130 of the Act, no power is vested in the authority to undertake the determination of tax liability. Tax can be determined only through adjudication as per section 74

(c) Goods liable for confiscation cannot be quantified on the basis of "eye estimation".

(d) Not every excess stock can be regarded as unaccounted. Accounting errors, change in consumption pattern of raw material, etc can result in variations, but they cannot be considered under "intent to evade tax".

Following cases can be referred for a greater insight:

[M/S METENERE LTD. VERSUS UNION OF INDIA AND ANOTHER (Allahabad High Court 2021 (52) G. S. T. L. 12 (All.) [2021] 91 G S.T.R. 223 (All))]

[M/S MAA MAHAMAYA ALLOYS PVT. LTD. VERSUS STATE OF U.P. AND 3 OTHERS (Allahabad High Court 2023 (73) G. S. T. L. 612 (All.))].

Consider a case where a search is conducted at premises of Mr. A who is a mobile dealer. During search, the officers while matching the physical inventory with the inventory as per books found that physical stock of mobiles exceeds the stock as per books by fifty thousand units. However, Mr. A argues that excess stock is just lying in his premises and not "supplied" to anyone, since GST is applicable only on supply, hence department cannot proceed against him even if the stock is purchased without invoice. This argument of Mr. A shall fail for the reason that section 35(6) creates a deeming fiction that if a registered person fails to account for the goods or services as per section 35(1), then proper officer shall determine the tax payable on such goods or services that are not accounted for, as if such goods or services have been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of tax.

Note: - Failure to account for goods or services cannot be equated to non updation of accounts. If at the time of search, accounts are not updated, however, all tax invoices for inward and outward supply, delivery challans and other vouchers are available, then goods or services covered by those tax invoices, delivery challans cannot be considered as unaccounted. Many business enterprises employ part-time accountants who update accounts on bi-weekly, weekly or on some other periodicity basis.

Unaccounted goods, even at disclosed place of business can be treated as 'secreted' for the purpose of GST search under section 67. Even though this presumption may be

rebutted at later stage at the time of proceedings. *[Rajeev Traders Vs State of U. P. And 3 Others (Allahabad High Court WRIT TAX No. - 819 of 2019)].*

(xvi) One needs to pay attention to the relevant rules, wherein it is mandated that the details specified / prescribed ought to be captured while maintaining books and records viz., name, address, GSTIN, description, quantity, value etc., as stipulated in section 31 needs to be captured. Special category of persons such as works contractors, lessors, agents, auctioneers, etc. ought to maintain data / details in the manner specified.

(xvii) It is important to note that rule 56(6) clearly specifies that taxable goods stored in an unregistered place of business without cover of valid documents would be subject to tax as if such goods have been supplied.

(xviii) Entries in books and records cannot be erased, effaced or overwritten. However, any such act needs to be attested in cases of manual maintenance of books and records while digital records would require a suitable log of such corrections to be maintained.

(xix) Rule 56(10) is presumptive in nature. Meaning any documents or books and records found in a place other than the registered persons' place of business, it would be presumed to be maintained by such registered person. All other consequences under the GST Laws would automatically follow.

(xx) The law mandates the following persons to maintain the records of the consigner, consignee and other relevant details of the goods, even if such persons are not registered under the Act:

(a) A transporter of goods; and

(b) Persons who own and operate, or persons who operate any warehouse, godown, etc. for storage of goods – the goods shall be stored in a manner in which they can be identified item-wise and owner-wise.

The provisions relating to enrolment of transporters are amended vide *The Central Goods and Services Tax (Sixth Amendment) Rules, 2018* with effect from 19.06.2018 wherein it is specified that in case the transporter having place of business in more than one State or Union Territory and all such places of business are registered under the provisions of the GST law, shall obtain the unique common enrolment number. The application seeking unique common enrolment number shall be filed in Form GST ENR – 02. Such registered transporter shall enrol on the basis of GSTIN of any State of his choice. It is also provided that such enrolment number shall be used by the transporter for generating the e-way bills and for undertaking the transport of goods.

Rule 56(18) requires that every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for time being in force. However, this rule does not give unfettered right to GST Officers to call for books of account as per their wish. Books are required to be produced only when it is mandated under GST Act. Section 65-

Audit by tax authorities, Section 66-Special audit, Section 67-Power of inspection, search and seizure, Section 71-Access to business premises are some of the sections where GST officers or Auditors can demand for books of account. No books can be demanded to initiate proceedings under section 61.

35.4 Issues and concerns

1. **Multiple books of account for the same entity:** While the accounts of a person are required to be maintained for the entire business concern (i.e., PAN-wise), the GST law requires separate book keeping for every GSTIN. This will mean that every account maintained will repeat based on the number of GSTINs obtained under a single PAN. The solution to this task may be to maintain records in such a manner so as to capture the GSTIN to which every transaction pertains, separately, so as to enable the person to extract only such of those transactions relevant to a particular GSTIN.
2. **Separate book-keeping practices for GST law:** The registered person is liable to record the details of all supplies, whether or not the supplies are considered to be supplies under the Accounting Standards or any such requirement under other statutes. While some transactions would have a netting-off effect – such as stock transfers, certain other transactions may not form part of the revenue of the entity - such as permanent disposal of a business asset without consideration / supply valued under the valuation rules wherein the consideration actually received is different from the value of supply for the purpose of the GST laws. One must exercise utmost caution to attend all such transactions with a view to ensure that the financial statements are not misreported with details relevant only from the GST standpoint. E.g., Credit notes not fulfilling conditions under the GST law cannot reduce the value of supply, while the books of account would reflect reduction in the value.
3. **Books in respect of 'non-monetary' transactions:** The law makes no concession in respect of transactions that are underlying for 'non-monetary' consideration. As such, care must be taken to document through identifiable invoice (may be, separate series) and corresponding disclosure (for time and place of supply) and the basis for such non-monetary transactions so that they can be tracked separately.

35.5 FAQs

Q1. Where should the books and other records u/s 35 be maintained?

Ans. Such records shall be maintained at his principal place of business, as mentioned in the certificate of registration. If more than one place of business is specified in the certificate of registration, records relating to each place of business should be maintained at that place.

Q2. What are the records that are to be maintained u/s 35?

Ans. The following records are to be maintained u/s 35

(i) Production or manufacture of goods;

(ii) Inward or outward supply of goods or services or both;

(iii) Stock of goods;

(iv) Input tax credit availed;

(v) Output tax payable and paid; and

(vi) Such other as may be prescribed.

Q3. In case, more than one place of business is specified in the certificate of registration, can the assessee choose to maintain records at a single place for all the places within that State?

Ans. No, in such cases, the accounts and records relating to each place of business shall be kept at such places of business concerned.

Q4. Whether the records are to be maintained physically or in electronic form?

Ans. The records need to be maintained either physically or in electronic form. In case, they are maintained in electronic form, then they must conform to such procedures as may be prescribed.

Q5. Apart from the records maintained above, are there any additional document to be submitted/maintained?

Ans. Section 44(1) obligates an assessee whose turnover exceeds the limit is required to file an electronic self-certified reconciliation statement and assessee is obliged to submit such a statement in addition to the audited statement of accounts and other documents and records prescribed.

35.6 MCQs

Q1. The books and other records u/s 35 are to be maintained at ___

(a) Place where the books of account are maintained.

(b) Principal place of business mentioned in the Registration Certificate.

(c) Place of address of the Proprietor/ Partner / Director / Principal Officer, etc.

(d) Any of the above.

Ans. (b) Principal place of business mentioned in the Registration Certificate

Q2. In case, more than one place of business situated within a State are specified in the Registration Certificate, books and other records shall be maintained at ___

(a) Each such place of business

(b) At the principal place of business mentioned in the Registration Certificate for all places of business in each State.

(c) Place where the books of account are maintained for all places situated within a State.

(d) Any place of business in a State pertaining to all places situated within that State.

Ans. (a) Each such place of business

Q3. Which of the following is true?

(a) The assessee can maintain some records with prior permission of the Commissioner.

(b) The assessee is obligated to maintain such additional records as the Commissioner may notify.

(c) The assessee can maintain only records notified thereto by the Commissioner.

(d) The specified class of assessee are obligated to maintain such additional or other records as the Commissioner may notify.

Ans. (d) The specified class of assessee are obligated to maintain such additional or other records as the Commissioner may notify.

Statutory provisions

36. Period of retention of accounts

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, 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 proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Related provisions of the Statute

Section or Rule	Description
Section 35	Accounts and other records
Section 44	Annual Return

36.1. Introduction

This section provides for the period up to which records and accounts must be retained by the registered person.

36.2. Analysis

(i) Every registered person is required to mandatorily retain the books of accounts and other records until the expiry of 72 months (6 years) from the due date for filing of Annual Return for the year, i.e., 81 months from the end of the financial year pertaining to such accounts and records.

For instance, the books of account and other records for FY 2017-18 are to be maintained till 31.12.2024, regardless of the actual date of filing of annual return for the year.

(ii) This time period is more than the time limit prescribed in Section 62(1) for issuance of order of assessment i.e., 5 years from the due date for filing of annual return (in the above example, the order of assessment shall be issued by 31.12.2023).

(iii) In case an appeal or revision or any other proceeding is pending before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, or in case the registered person is under investigation for an offence under Chapter XIX, he 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 until the expiry of 72 months (6 years) from the due date for filing of Annual Return for the year whichever is later. This may result in maintaining the books and records even after the expiry of 72 months from the due date for furnishing the annual return.

36.3. Issues and concerns

Due date of annual return: In the event, the due date to furnish the annual return is amended for any reason, the registered person must bear in mind that the requirement to maintain the records would also stand extended accordingly. For instance, say the due date to furnish the annual return for FY 2017-18 is extended to 30-June-2019 for whatever reason, the period of retention would be 30-June-2025 and not 31-Dec-2024.

36.4. FAQs

Q1. Is there a separate time limit for maintenance of records specified where an assessee is involved in any litigation?

Ans. In case an assessee is a party to an appeal or revision or any other proceeding before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, (as an appellant or a respondent), or where he is under investigation for an offence under Chapter XIX, then he 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 1 year after final disposal of such appeal or revision or proceeding, or for the period specified u/s 36(1), whichever is later.

Q2. Who is responsible for the maintenance of proper accounts related to job work?

Ans. The responsibility for the maintenance of proper accounts of job work-related inputs and capital goods rests with the principal.

Q3. What action can be taken for transportation of goods without valid documents or attempted to be removed without proper record in books?

Ans. If any person transports any goods or stores any such goods while in transit without the documents prescribed under the Act (i.e., invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him, then such goods shall be liable for detention along with any vehicle on which they are being transported. Such goods shall be released only on payment of the applicable tax and penalty or upon furnishing of security.

36.5. MCQs

Q1. The time limit for upkeep and maintenance of the books of account or other records u/s 36 is?

(a) seventy-two months from the date of filing of Annual Return or due date of filing the Annual Return, whichever is earlier.

(b) five years from the due date for filing of Annual Return.

(c) seventy-two months from the due date of filing of Annual Return.

(d) None of the above.

Ans. (c) seventy-two months from the due date of filing of Annual Return

Q2. In case, the assessee is a party to an appeal or revision or any other proceeding before any Appellate Authority or Appellate Tribunal or Court, (as an appellant or a respondent), then the time limit for retaining the records shall be ___

(a) Up to the final disposal of such appeal or revision or proceeding.

(b) One year after final disposal of such appeal or revision or proceeding, or for the period specified u/s 36(1), whichever is earlier.

(c) Six months after final disposal of such appeal or revision or proceeding, or for the period specified u/s 47(1), whichever is later.

(d) One year after final disposal of such appeal or revision or proceeding, or for the period specified u/s 36(1), whichever is later.

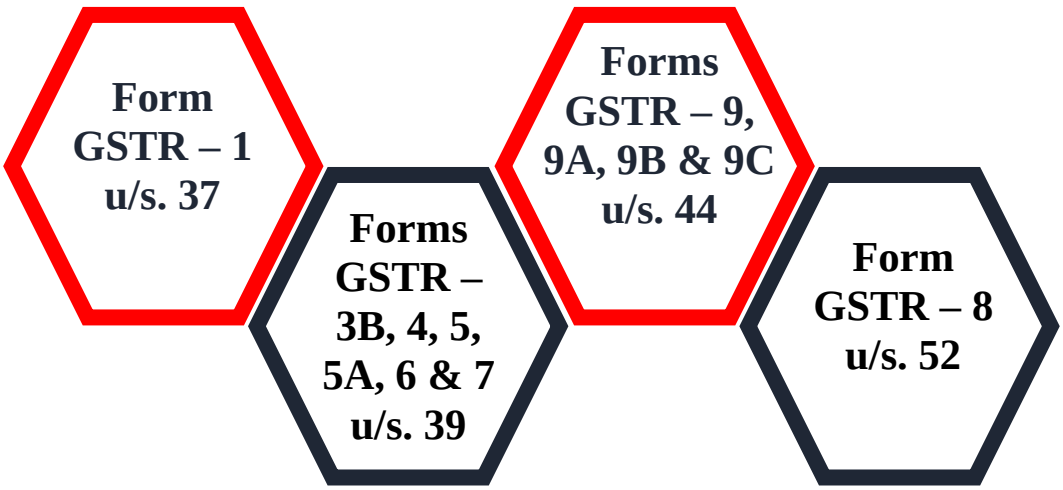
Ans. (d) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 36(1), whichever is later.

Chapter 10
Returns

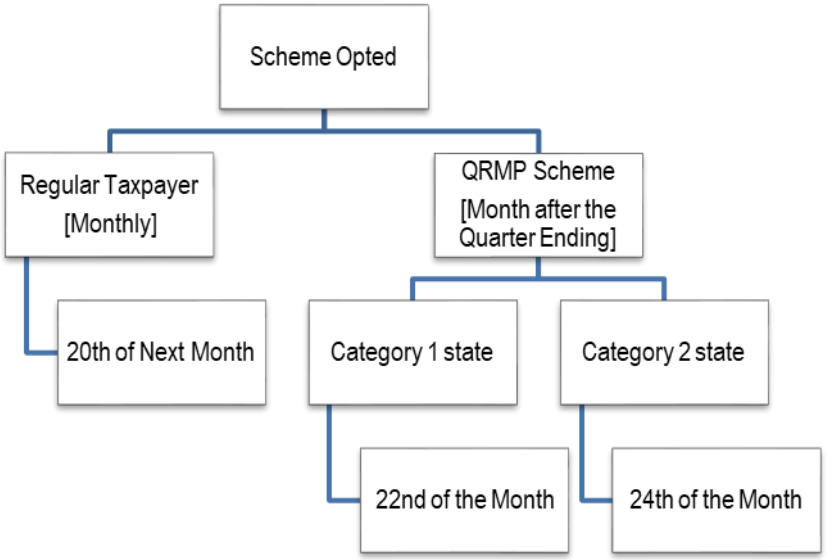
Sections	Rules
37. Furnishing details of outward supplies	59. Form and manner of furnishing details of outward supplies
38. Communication of details of inward supplies and input tax credit	60. Form and manner of ascertaining details of inward supplies
39. Furnishing of returns	61. Form and manner of furnishing of return
40. First return	61A. Manner of opting for furnishing quarterly return
41. Availment of input tax credit	62. Form and manner of submission of statement and return
42. [Omitted]	63. Form and manner of submission of return by non-resident taxable person
43. [Omitted]	64. Form and manner of submission of return by persons providing online information and database access or retrieval services
43A. [Omitted]	65. Form and manner of submission of return by an Input Service Distributor
44. Annual return	66. Form and manner of submission of return by a person required to deduct tax at source
45. Final return	67. Form and manner of submission of statement of supplies through an e-commerce operator
46. Notice to return defaulters	67A. Manner of furnishing of return or details of outward supplies by short messaging service facility
47. Levy of late fee	68. Notice to non-filers of returns
48. Goods and services tax practitioners	

	69 to 77 [Omitted] 78. Matching of details furnished by the e-Commerce operator with the details furnished by the supplier 79. [Omitted] 80. Annual return 81. Final return 82. Details of inward supplies of persons having Unique Identity Number 83. Provisions relating to a goods and services tax practitioner 83A. Examination of Goods and Services Tax Practitioners 83B. Surrender of enrolment of goods and services tax practitioner. 84. Conditions for purposes of appearance

Returns/Statements under the GST Law



Due Dates of Form GSTR-3B



Category – 1 Sates:

Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands, or Lakshadweep

Category – 2 States:

Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

QRMP Scheme:

1. Quarterly GSTR 3B returns and Monthly Payment of Taxes. Pay the tax due in each of the first two months of the quarter by depositing the due amount in Form GST PMT-06, by the 25th day of the month succeeding such month under the head "Monthly payment for quarterly taxpayer".
2. Optional for the Registered persons, whose Aggregate turnover is up to Rs. 5 Cr. in the previous financial year.

FORM	PARTICULARS	DUE DATE	APPLICABLE TO
GSTR-3B	Monthly/ Quarterly summary return	→ As per the Table above	All registered persons other than: 1) Input Service Distributor (ISD),

			2) Non-Resident Taxable Person, 3) Person Paying Tax under section: a. 10 - Composition levy b. 51 - Tax deduction at source c. 52 - Collection of tax at source
GSTR-1/ IFF	Statement for furnishing details of outward supplies	• To be filed by either of the following person on or before the below given dates: Registered person, who are not under QRMP Scheme – File GSTR 1 by 11th of the next month. • Registered persons, who have opted for QRMP Scheme - File IFF (Invoice Furnishing Facility) by 13th of the subsequent month. Such persons can furnish details of outward supplies using IFF for the first two months of the quarter as under– **1st month of the Quarter** – on or before 13th of the subsequent month **2nd month of the Quarter** - on or before 13th of the subsequent month	Normal / Regular Taxpayer

		(Maximum value of invoices can be reported using IFF = upto a cumulative value of Rs. 50 Lakhs in each of 2 months). Only B2B Invoice can be reported through IFF facility. • Invoices furnished using the said facility in the first two months are not required to be furnished again in Form GSTR-1.	
GSTR-4	Statement / Return by composition taxpayers	Form GST CMP-08 by 18th of the month succeeding the quarter. Form GSTR-4 Annually by 30th April following the end of a financial year.	Composition Taxpayer
GSTR-5	Return by non-resident taxpayers [foreigners]	13th of the next month or within 7 days after the expiry of the registration, whichever is earlier	Non-Resident Taxpayer
GSTR-5A	Monthly Return by Online information and database access or retrieval services (supply made to non-taxable online recipient)	20th of the next month	Registered persons providing online information and database access or retrieval services
GSTR-6	Monthly Return by Input Service Distributors	13th of the next month	Input Service Distributor
GSTR-7	Monthly Return for TDS	10th of the next month	Tax Deductor

GSTR-8	Monthly Return (Statement) for Collection of Tax at Source	10th of the next month	E-Commerce Operator
GSTR-9	Annual return	The due date for filing GSTR-9 & GSTR-9C is 31st December of the next Financial Year. However, the due date for the FY 2017-18, 2018-19, 2019-20 and 2020-21 was extended by various notifications. **EXTENSION** → **FY 2017-18:** The due date was extended till 05.02.2020 for the registered person whose principal place of business is in the Category – 1 States* and 07.02.2020 for rest of the States. (*Notf. No 06/2020 CT dated 03.02.2020*) → **FY 2018-19**: The due date was extended till 31.12.2020 (*Notf. No. 80/2020 – CT dated 28.10.2020*). → **FY 2019-20:** The due date was extended till 31.03.2021 [*Notf. No. 4/2021 – CT dated 28.02.2021*] → **FY 2020-21**: The	Annual return is to be filed by every registered person other than the following: a. Casual Tax payer, b. Input Service Distributer (ISD), c. A person paying tax under section 51 – Tax deduction at source, d. A person paying tax under section 52 – Collection of tax at source, e. Non-Resident Taxable Person. ***Category – 1 States:** Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand. → The Central Government, vide various notifications, had made optional for the small taxpayers whose aggregate turnover in the financial year is up to Rs. 2 Crore, from filing the requirement of annual return for the financial year 2017-18,

<table>
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<td></td>
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<td>due date was extended till 28.02.2022. [Notf. No. 40/2021 – CT dated 29.12.2021.</td>
<td>2018-19 and 2019-20. However, for FY 2020-21, 2021-22 and 2022-23 the Commissioner, vide various notifications had exempted the registered person, whose aggregate turnover in the financial year is up to two crore rupees, from the requirement of filing annual return.
<table>
<tr><th>Financial Year</th><th>Notification No.</th></tr>
<tr><td>2017-18, 2018-19 and 2019-20</td><td>N.N. 47/2019-CT dated 09.10.2019 further amended by N.N. 77/2020-CT dated 15.10.2020</td></tr>
<tr><td>2020-21</td><td>N.N. 31/2021-CT dated 30.07.2021</td></tr>
<tr><td>2021-22</td><td>N.N. 10/2022-CT dated 05.07.2022</td></tr>
<tr><td>2022-23</td><td>32/2023-CT dated 31.07.2023</td></tr>
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<tr>
<td>GSTR-9C</td>
<td>Reconciliation Statement</td>
<td>To be filed along with GSTR 9 wherever</td>
<td>Turnover limit for mandatory filing of GSTR-</td>
</tr>
</table>

		applicable and due date is Same as specified for GSTR 9.	9C (Reconciliation Statement) a. **FY 2017–18**: Normal taxpayers having aggregate turnover of more than 2 crores. b. **From FY 2018-19:** onwards, the limit has been increased to Rs.5 crores.
GSTR-9A	Annual return by Composition Dealers	31st December of the next Financial Year.	Composition Taxpayer The requirement of mandatory filing of annual return has been made optional by way of various notifications issued from time to time for the FY 2017-18, 2018-19, 2019–20, 2020–21 ,2021-22 and 2022-23 for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees. If the Composition Taxpayer migrated to Regular Scheme owing to increase in the Turnover and while filing the Annual Return GSTR 9, such taxpayer shall also file GSTR 9A for the said period. The same is also to be reported in Table 5L of GSTR 9C.
GSTR-10	Final Return	Within 3 months of the date of cancellation or date of order of cancellation, whichever is later	Registered Person whose registration has been cancelled

GSTR-11	Return to be filed by a person having UIN (Unique Identity Number) w.r.t inward supplies received by him to file refund of the taxes paid by him on inward supplies.		Person having UIN

Note: Above due dates have been extended from time to time. Please refer Annexure-'A' for the details of extended due dates and relevant notification(s).

Statutory Provisions

37. Furnishing details of outward supplies

(1) Every registered taxable person, other than an input service distributor, a non-resident taxable person and a person paying tax under the provisions of section 10, section 51 or section 52, shall furnish, electronically [1][subject to such conditions and restrictions and] in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details [2][shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies]:

[3][~~Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:~~]

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

[5][Provided further that] any extension of time limit notified by the Commissioner of

[1] Inserted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022.

[2] Substituted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022 for "shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed".

[3] Omitted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022.

[4] Substituted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022 for "provided further that".

[5] Substituted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022 for "provided also that".

State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner

(2) *[6][~~Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.~~]*

(3) *Any registered person, who has furnished the details under sub-section (1) for any tax period [7][~~and which have remained unmatched under section 42 or section 43~~], shall, upon discovery of any error or omission therein, rectify such error or omission 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 [8][the thirtieth day of November ~~furnishing of the return under section 39 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

[9][Provided further that the 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 39 for the month of September, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.].

[10][(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods]

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[6] Omitted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022.

[7] Omitted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022.

[8] Substituted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022.

[9] Inserted vide Order No. 02/2018-CT dt.31.12.2018

[10] Inserted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022.

[11]*[(5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after the expiry of a period of three years from the due date of furnishing the said details:*

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details.]

Explanation.—For the purposes of this Chapter, 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.

Extract of the CGST Rules, 2017

[12]***[59. Form and manner of furnishing details of outward supplies***

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) The registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months, - using invoice furnishing facility (hereafter in this notification referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month:

[13][Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021]:

[14][Provided further that a registered person may furnish such details, for the month of May, 2021, using IFF from the 1st day of June, 2021 till the 28th day of June, 2021].

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

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[11] Inserted by The Finance Act, 2023, w.e.f. 1st October, 2023 vide Notf No. 48/2023 - CT dt. 29.09.2023..

[12] Substituted vide Notf No. 82/2020-CT dt. 10.11.2020 and applicable w.e.f. 01.01.2021.

[13] Inserted vide Notf. No. 13/2021-CT dt. 01.05.2021.

[14] Inserted vide Notf. No. 27/2021-CT dt. 01.06.2021.

(4) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the—

(a) invoice wise details of all—

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;

(b) consolidated details of all—

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the—

(a) invoice wise details of inter-State and intra-State supplies made to the registered persons;

(b) debit and credit notes, if any, issued during the month for such invoices issued previously].

[15][(6) Notwithstanding anything contained in this rule,—

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B [16][for the preceding month];

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) [17][~~a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the~~

[15] Inserted vide Notf. No. 01/2021-CT dt. 01.01.2021.

[16] Substituted vide Notf No. 35/2021-CT dt. 24.09.2021, applicable w.e.f. 01.01.2022 for "for preceding two months".

[17] Omitted vide Notf No. 35/2021-CT dt. 24.09.2021, applicable w.e.f. 01.01.2022.

~~*return in FORM GSTR-3B for preceding tax period*~~*].*

[18]*[(d) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C.]*

[19]*[(e) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88D in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either paid the amount equal to the excess input tax credit as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess input tax credit that still remains to be paid, as required under the provisions of sub-rule (2) of rule 88D;*

(f) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the details of the bank account as per the provisions of rule 10A.]

Related provisions of the Statute:

Section or Rule	Description
Section 2(82)	Definition of 'Output Tax'
Section 2(83)	Definition of 'Outward Supply'
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 2(117)	Definition of 'Valid Return'
Section 16	Eligibility and Conditions for taking Input Tax Credit
Section 17	Apportionment of Credits and Blocked Credits
Section 22	Persons liable for registration

[18]*Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.*
[19]*Inserted vide Notf No. 38/2023-CT dt. 04.08.2023.*

Section 24	Compulsory registration in certain cases
Section 38	Communication of details of inward supplies and input tax credit
Section 39	Furnishing of Returns
Section 47	Levy of late fee
Section 14 (IGST)	Special provision for payment of tax by a supplier of online information and database access or retrieval services.

37.1 Introduction

This provision relates to the furnishing of details of outward supplies by the supplier.

37.2 Analysis

(a) A return of outward supplies in terms of this section should be furnished by every registered taxable person except for the following persons namely,

- Input service distributor.
- A non-resident taxable person.
- A person paying tax under the provisions of section 10 (composition levy).
- A person paying tax under the provisions of section 51 (TDS).
- A person remitting tax collected under the provisions of section 52 (TCS).
- A person referred to in section 14 of IGST Act – a person providing Online Information and Data Access & Retrieval Services to a non-taxable online recipient.

(b) Explanation to section 37 relating to furnishing of the "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. This e-return shall be filed within 11 days from the end of the tax period in **FORM GSTR-1** other than those taxpayers who have opted for QRMP Scheme.

(c) This return is reporting of Outward supply of goods or services or both as effected during a tax period and other relevant particulars. This shall be filed electronically.

(d) The Commissioner is empowered to notify any extension of due date of filing, for any class of persons, beyond the tenth of the succeeding month, with reasons to be recorded in writing. Refer to Annexure 'A' at the end of the chapter, for extensions notified, from time to time, for various returns.

(e) The details provided by the supplier in GSTR-1 shall be auto-populated and made available electronically to the recipient, for matching purposes, in accordance with the provision of rule 60 in a FORM GSTR-2B / FORM GSTR-2A, which can be used for reconciliation before filing GST return.

(f) Any error or omission in terms of provisions of sub-section (3) of section 37 can be regularised by the registered person within the prescribed time. The time limit prescribed for regularisation of any error or omission is earlier of the following events:

→ 30th day of November (prior to FY 2021–22 amendment was permitted till filing of the return u/s. 39 for the month of September) following the end of the financial year; or

→ furnishing of the relevant annual return for the said financial year.

(g) However, it was provided vide Central Goods and Services Tax (Second Removal of Difficulties) Order, 2018, rectification of any error or omission pertaining to the financial year 2017-18 shall be allowed till the due date for furnishing the details under sub-section (1) 0f section 37 for the month of March, 2019 or for the quarter January, 2019 to March, 2019.

For example: Assume an entity has furnished the annual returns for the FY 2021-22 on August 14, 2022. An error is discovered by the entity while filing the return for the month of October 2022 on November 18, 2022 in respect of a transaction pertaining to the tax period July 2021. In this case, the rectification of the error pertaining to a transaction in July 2021 cannot be made because the said entity has already filed its annual return on 14th August, 2022.

(h) The following registered person shall not be allowed to furnish the details of outward supplies of goods or services or both in Form **GSTR – 1/IFF**–

→ who has not furnished the following:

- Form GSTR – 1: details of outward supplies for any of the previous tax period.

  The Government, on the recommendations of the Council, subject to such conditions and restrictions, allow a registered person or a class of registered persons to furnish the details of the outward supplies, even if he had not furnished the details of outward supplies for one or more previous tax periods.

- Form GSTR – 3B:
  - Monthly filing – has not furnished the return in Form GSTR-3B for the preceding month.
  - QRMP - has not furnished the return in Form GSTR-3B for the preceding tax period.

→ who has been issued an intimation under rule 88C (1) intimating the difference in tax payable in Form GSTR 1 and tax paid through Form GSTR 3B for a tax period. This qualification will not cover those registered persons who have either deposited the differential tax communicated in the notice or have furnished a satisfactory reply.

→ who has been issued an intimation under rule 88D (1) intimating the ITC availed in Form GSTR 3B and ITC available in Form GSTR-2B in respect of a tax period. This qualification will not cover those registered persons who have either deposited the amount of excess ITC as communicated in the notice or have furnished a satisfactory reply.

→ who has not furnished details of the bank account as per the provisions of Rule 10A.

The registered person is only allowed to furnish details of outward supplies in Form GSTR-1 or IFF for a tax period upto 3 years from the due date of furnishing the said details. This amendment came into effect w.e.f. 01.10.2023.

The Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details.

Linking E-Way Bill with GSTR-1

Every registered person who causes movement of goods of consignment value exceeding Rs. 50,000/- for Inter State Movement or specified Amount for Intra State Movement (as prescribed under the respective State GST law), as the case may be, in relation to supply, or for reason other than supply such as sale of goods on approval basis, job work etc., or due to inward supply from an unregistered person excluding exempted goods needs to furnish information relating to the said goods and thereby, furnish details of invoices / bill of supply / delivery challan while generating e-way bills. Further, the invoice details for supplies have to be given in FORM GSTR-1 by the taxpayer. To avoid duplicate data entry, GSTN has provided a facility to taxpayers, where e-way bill data of a tax period can be imported by the taxpayer in their FORM GSTR-1. If the number of e-way bills generated in a month are:

- up to 50 only, the invoice details can be directly imported into the respective Tab of Form GSTR 1, without using the offline tool.
- more than 50 but less than 500, invoices can be downloaded in three separate CSV files with data pertaining to B2B transactions, B2C transactions and HSN summary. These files can then be imported into FORM GSTR-1 offline tool.
- more than 500, the invoice details in respect of B2B transactions, B2C transactions and HSN summary can be imported from E-Way Bill portal in a single excel file. This file can then be imported into FORM GSTR-1 offline tool.

However, the data so imported can be edited while filing FORM GSTR-1.

It is pertinent to mention here that **'import EWB data'** option in the GSTN portal and selection of requisite data of invoices to be uploaded in the GSTR-1 is an option, made available to

ease the return filing procedure and the same is not mandatory. Where the user decides not to use the option, details of such invoices are to be filed manually.

Matching details given in FORM GSTR-1 with those given in the e-way bill will curb tax evasion as evident from certain facts revealed like some transporters are doing multiple trips by generating only a single e-way bill or not reflecting invoices for which e-way bill is generated while filing FORM GSTR-1 or e-way bill is not being generated even as supplies are being made etc.

However, certain points to be considered while reconciling e-way bills generated with the data declared in GST returns so that frivolous demands are not raised, as there are many instances where e-way bill would not get generated even for supply reported in GSTR 1:

- movement of goods over and above a threshold limit require generation of e-way bill while data declared in FORM GSTR-1 includes all the supplies regardless of any threshold,
- in case of supply of services, no e-way bill is required to be issued while the same needs to be duly reported in FORM GSTR-1,
- varied State-specific requirements, such as different threshold limits and notified products for which e-way bills are required,
- reconciliation of the value of supplies considering the credit notes (tax or financial) issued later by the supplier to factor the discounts, deficiency, etc. for the customer, while these are reported in GSTR 1 and there will not be corresponding eWay Bill linking to such Credit note. eWay Bill portal requires delivery challan for Sales Return etc.
- In case where goods are transported by job worker, the e-way bill will be generated on the basis of Delivery Challan and not on the basis of tax invoice issued by job worker for job work charges. In the instant case Value of eWay bill would be higher than Value reported in GSTR 1 since, the value of goods moved on the basis of Delivery Challan is not to be reported in FORM GSTR-1 and neither there is mention of tax invoice issued by job worker for job work charges in e-way bill; therefore, no data would be auto-populated in FORM GSTR-1 of the job worker.

Linking E-invoice with GSTR-1

1. Every registered whose Aggregate Turnover in any of the preceding financial year from 2017-18 onwards, exceeds Rs. 5 crore, is liable to generate e-Invoice as per Rule 48(4).
2. Unique Invoice Reference Number (IRN) - Invoice Reference Number (IRN) is generated after successfully reporting of Invoices on the Invoice Registration Portal (IRP).
3. E-invoices, once generated, can be cancelled on the IRP portal within 24 hours.
4. The documents (invoices, debit notes, credit notes) reported on the IRP are transmitted

electronically automatically to the GST system two days after generation & are auto-populated in the respective tables of the GSTR-1 of such taxpayers.

5. These auto-populated documents would appear as Saved records in Form GSTR-1 of the registered person along with source of the document mentioned as 'E-invoice' & IRN details also mentioned against each and every record.

6. Reporting of record on the basis of Document Date

   a) The tax-period of GSTR-1 in which the e-invoice will be auto-populated will be as per the *Document Date, irrespective of the date on which the document (invoice, debit note, credit note) was reported on the IRP* & the IRN was generated (Date of Generation).

      Illustration: Taxpayer reports Invoice No. A-253 dated 30th November 2023 on the IRP on 4th December 2023. In this case, the e-invoice details will be reflected in the GSTR-1 for November 2023, even if the IRN is generated in December 2023.

   b) If the taxpayer reports the document (invoice, debit note, credit note) on the IRP *after filing* GSTR-1 for that period, then the e-invoice will *not* be auto-populated in any subsequent GSTR-1. The Excel file containing the e-invoice details can still be downloaded from the GSTR-1 dashboard for the tax-period to which the document (invoice, debit note, credit note) pertains to.

      Illustration: Taxpayer reports Invoice No. A-253 dated 30th November 2023 on the IRP on 24th December 2023. The GSTR-1 for November 2023 was already filed on 10th December 2023. Consequently, Invoice No. A253 will not be auto-populated in GSTR-1 and would be available for download in Excel format appearing on the GSTR-1 dashboard for November 2023.

   c) If the taxpayer reports the document (invoice, debit note, credit note) on the IRP *after* manually entering the document in GSTR-1, the manually entered data will not be over-written even if the GSTR-1 is not filed. The Excel file containing the e-invoice details can still be downloaded from the GSTR-1 dashboard of the tax-period to which the document (invoice, debit note, credit note) pertains to. Since the document already exists in GSTR-1 and it is not auto-populated in GSTR-1 from IRP, a message regarding this will be mentioned in the Excel file against the specific document(s).

      Illustration: Taxpayer reports Invoice No. A-252 dated 15th November 2023 on the IRP on 20th November 2023. However, the taxpayer had already manually added Invoice No. A-252 dated 15th November 2023 in the GSTR-1 before 20th November 2023. In this case, the invoice entered manually in GSTR-1 will not be over-written & could be viewed in the Excel file

7. Auto population of e-invoice happens into the following tables:

Sl. No.	Type of Supply	Auto-populated in GSTR-1 table of Supplier
1.	Taxable outward supplies made to registered persons (other than reverse charge)	**B2B** 4A - Supplies other than those (i) attracting reverse charge and (ii) supplies made through e-commerce operator
2.	Taxable outward supplies made to registered persons attracting reverse charge	**B2B** 4B - Supplies attracting tax on reverse charge basis
3.	Export supplies	**EXP** 6A – Exports
4.	Credit or debit notes issued to registered persons	**CDNR** 9B – Credit or debit notes (Registered)
5.	Credit or debit notes issued to unregistered persons	**CDNUR** 9B – Credit or debit notes (Unregistered) – with UR type as Exports with payment and without payment of tax

8. GST System aggregates the item-level details reported in the e-invoices at Rate-level for the purpose of auto-population into GSTR-1. For the records auto-populated in GSTR-1 on the basis of e-invoices, the following additional details will also be displayed in GSTR-1 :

   a. Source *(e-invoice)*

   b. Invoice Reference Number (IRN)

   c. Invoice Reference Number Date (IRN Date)

9. GSTR-1 is a *statement of outward supplies* which is prepared on the basis of the documents (*invoices, debit notes, credit notes*) issued by the taxpayers, and is a summary of the same for a given tax-period. Data reported in e-invoices should thus match with the data reported in GSTR-1. Consequently, if a taxpayer edits the data auto-populated in GSTR-1 from e-invoices, such edited documents will be treated as if they were not auto populated but uploaded separately by the registered person. Thus, **the data auto-populated in the '*Source*', '*IRN*' and '*IRN date*' fields will be deleted by the system in such cases**. Registered persons are, thus, advised to modify/update the details auto-populated from e-invoices only if they are not as per the actual documents (*invoices, debit notes, credit notes*) issued by them.

10. Outward supplies details other than those reported in on the IRP have to be manually entered in GSTR-1.

11. Before filing GSTR-1, taxpayers are advised to review the details of e-invoices auto-populated in specified tables. This can be done by :
    a. Viewing online on GST Portal, or
    b. Downloading the JSON file from GST Portal, or
    c. Using APIs through GST Suvidha Providers (GSPs)

It may be noted that the auto-populated details in the Excel file available on the GSTR-1 dashboard are as per the data reported on Invoice Registration Portal (IRP). Any subsequent modifications made by the registered person to the auto-populated details in the GSTR-1 tables would not be reflected in this Excel file. Therefore, this Excel file would not serve the purpose of reconciliation, if auto-populated data is changed by the taxpayer at any stage.

Cancellation of e-invoices on the IRP:

Documents reported on the Invoice Registration Portal (IRP) can be cancelled within 24 hours. Upon cancellation, the cancellation data flows to GST system and all cancelled document(s) which were appearing as *saved* documents in GSTR-1 are deleted from the GSTR-1. The status of the document will be updated in the Excel file, from Valid to Cancelled. In the following scenarios, the document status is updated in the Excel file upon cancellation on IRP, even if no further action is possible in GSTR-1:

a. After filing of GSTR-1, e-invoices are generated and cancelled for the said period.

b. Document edited manually by the taxpayer on the portal in GSTR 1.

c. Original Invoice Document is not auto-populated in GSTR 1 due to technical error.

Components of Statement of Outward Supplies (Form GSTR-1) furnished by the Taxpayer:

This Statement of outward supplies would capture the following information:

1. GSTIN
2. (a) Legal name of the registered person
   (b) Trade name, if any,
3. (a) ARN
   (b) ARN Date
4. The transactions of outward supplies are required to be furnished in the Statement i.e., Form GSTR 1 at an invoice / consolidated level, as per the requirements laid down in law / rules which are as mentioned in the below table:

   Case 1: Submission of information at Invoice level.

   Case 2: Submission of information at consolidated (Place of supply) level.

Case 1 - Submission of information at Invoice level.

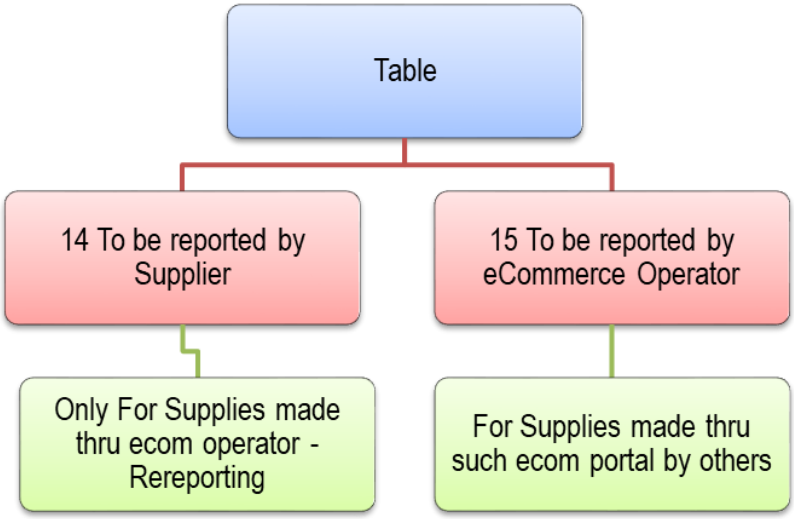
Supplies made to	Invoice Value	Level of submission	Table Reference
Registered Persons	Any	Invoice level	Table 4
Unregistered Persons (stated as Consumer in the return) (Inter-State Supply only)	> 250,000	Invoice level	Table 5
Export of Goods or Services or Both	Any	Invoice Level	Table 6
Credit Note / Debit Note for the above	Any	Invoice Level	Table 9

Case 2 - Submission of information at consolidated (Place of supply) level.

Supplies made to	Invoice Value	Level of submission	Table Reference
Unregistered Persons – Intra State	Any	Consolidated	Table 7
Unregistered Persons – Inter State Supply (stated as Consumer in the return)	< 250,000	Consolidated	Table 7
All Nil and Exempted Supplies	Any	Consolidated	Table 8
All Non-GST Supplies	Any	Consolidated	Table 9
Advances from Customer	Any	Consolidated	Table 11

Note: For all B2C supplies (whether inter-State or intra-State) where invoice value is up to Rs. 2,50,000/- State-wise and rate-wise summary of supplies should be uploaded in Table 7 of the Form GSTR-1.

Additional Reporting of Ecommerce Transactions



Notification No. 26/2022 – CT dated 26.12.2022 inserted Table 14 and 15 on reporting of supplies made through ecommerce operator.

1. Summary of Table 14 & 151. Table 14 – Details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under section 52 of the Act or liable to pay tax u/s 9(5)
    a. 14(a): Supplies on which supplier is liable to pay tax Sec 9(1) [E-commerce operator liable to collect tax u/s 52] –
        a. Liability which has already been reported in any of table 4 to 10 of GSTR-1, shall be reported by the supplier in this section
        b. Taxable value or Tax liabilities will NOT be auto populated from this table to GSTR-3B
    b. 14(b): Supplies on which e-commerce operator liable to pay tax u/s 9(5)
        a. Tax on these supplies shall be paid by the ECO and not by the supplier.
2. Table 14A: Amendments to supplies reported in table 14(a) in earlier tax period shall be reported here.
3. Table 15: Details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5)
4. Table 15A: Amendment to the details reported in table 15 in earlier tax periods in respect of registered or unregistered recipients shall be reported here.
5. Table 15A(I): Amendments in the values reported in Table 15 for registered recipients.
6. Table 15A(II): Amendments in the values reported in Table 15 for un-registered recipients.

Additional Comments: Every registered person furnishing any statement or return or making any application, shall make sure that they have read the instructions provided by GSTN which is to be followed by every registered person furnishing such statement / return / application. The said instruction is available in the format(s) of Form(s) prescribed in CGST Rules, 2017 as well as at the offline utility of each of the Statement / Return / Application.

Illustration:

1. **HSN requirement:** HSN summary to be provided in Table 12 of Form GSTR 1 is divided into 2 parts vide *Notification No. 78/2020 – C.T. dated15.10.2020*

   (a) Aggregate Turnover up to Rs. 5 crore in the previous financial year - 4 digits compulsorily for B2B supply and optional for B2C supply;

   (b) Aggregate Turnover above Rs. 5 crore in the previous financial year - 6 digits.

   It is also important to note that, HSN Summary or summary of supplies at the description of goods / services level, shall also contain details of supplies which are exempt from payment of tax or is not liable to Goods and Service Tax i.e., non-taxable supply (example supply of alcoholic liquor meant for human consumption).

2. **Furnishing of details of Exports including supplies made to SEZ unit or SEZ developer / Deemed Exports:** Details of export of goods or services or both are to be separately furnished in Table 6A of Form GSTR-1.

37.3 Issues and Concerns

(i) It is important for every registered person to note that the details of all outward supplies made by him is to be furnished in Form GSTR-1 i.e., statement of outward supplies, irrespective of the fact, whether such supply is outside the umbrella of GST or exempted from payment of tax i.e., GST, by way of exemption notification or is it a supply of notified goods or services which is liable to tax in the hands of recipient. The reason for disclosure is (1) the law requires one to provide details of such supplies though not liable to tax and (2) by disclosing the values of all supplies, the registered person is effecting a reconciliation of financial statements with that of statements / returns furnished.

(ii) Person effecting zero-rated supplies (physical export of goods), who wishes to claim refund of taxes paid has to ensure that details relating to such supplies as provided in GSTR-1, like invoice no., shipping bill details, value of goods exported and amount of IGST paid match with the details as available in the ICEGATE system. Only on matching of such details, refund of tax paid will be granted. Therefore, it is important that every registered person making physical export of goods verifies whether details of all export invoices as provided in GSTR-1 matches with details available in customs in ICEGATE.

The same can be verified by logging in to www.gst.gov.in with valid credentials and following the below mentioned steps:

Refunds >> Track Status of Invoice data to be shared with ICEGATE

Note: If the difference in the value of IGST paid is more than ₹ 100, between values disclosed in Form GTSR-3B and that of Form GSTR-1, the information will not be shared by GSTN for verification by ICEGATE, in such cases one has to first ensure that there is parity in the value disclosed in Form GSTR-3B and Form GSTR-1 by amending the details as required.

37.4 Quarterly Return Monthly Payment Scheme (QRMP Scheme)

GST Council, in its 42nd meeting held on 05.10.2020, had recommended that registered person having aggregate turnover up to five crore rupees may be permitted to furnish return on quarterly basis along with monthly payment of tax, with effect from 01.01.2021. Accordingly, the scheme was announced and the registered person having an aggregate turnover of up to 5 crore rupees in the preceding financial year were allowed to file quarterly Form GSTR – 1.

Details of the scheme are explained below:

a. For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month.

b. The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month.

c. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available.

d. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th - day of the succeeding month.

e. IFF consists of the following Tables of FORM GSTR-1:

   a) 4A, 4B, 6B, 6C – B2B, SEZ, DE Invoices

   b) 9B – Credit/ Debit Notes (Registered)

   c) 9A – Amended B2B Invoices

   d) 9C – Amended Credit/ Debit Notes (Registered)

f. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2B / 2A of the concerned recipient.

g. The facility of furnishing details of invoices in IFF is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

h. The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1. Accordingly, the details of

outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in FORM GSTR-1 for the quarter.

Statutory Provisions

[20]***[Section 38. Communication of details of inward supplies and input tax credit.***

(1) The details of outward supplies furnished by the registered persons under subsection (1) of section 37 and of such other supplies as may be prescribed, and an auto generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed.]

[20] Substituted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 and applicable w.e.f. 01.10.2022.

Extract of the CGST Rules, 2017

[21][60. Form and manner of ascertaining details of inward supplies.

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

(2) The details of invoices furnished by an non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR-2A electronically through the common portal.

(3) The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 65 shall be made available to the recipient of credit in Part B of FORM GSTR-2A electronically through the common portal.

(4) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the common portal

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

(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of FORM GSTR-2A electronically through the common portal.

(7) An [22][auto-generated ~~*auto-drafted*~~*] statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B , for every month, electronically through the common portal, and shall consist of -*

(i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;

(ii) the details of invoices furnished by a non-resident taxable person in FORM GSTR-5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,-

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[21] Substituted vide Notf No. 82/2020-CT dt. 10.11.2020 w.e.f. 01.01.2021.

[22] Substituted vide Notf No. 19/2022 - CT dt. 28.09.2022, applicable w.e.f. 01.10.2022.

(a) for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;

(b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;

(c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter;

(iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

(8) The Statement in FORM GSTR-2B for every month shall be made available to the registered person,-

(i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in FORM GSTR-1 by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;

(ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39].

Related provisions of the Statute

Section or Rule	Description
Section 2(62)	Definition of 'Input Tax'
Section 2(67)	Definition of 'Inward Supply'
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 2(117)	Definition of 'Valid Return'
Section 16	Eligibility and Conditions for Taking Input Tax Credit
Section 17	Apportionment of Credits and Blocked Credits
Section 22	Persons liable for registration
Section 24	Compulsory registration in certain cases

Section 37	Furnishing details of Outward supplies
Section 39	Furnishing of Returns
Section 47	Levy of late fee
Section 14 (IGST)	Special provision for payment of tax by a supplier of online information and database access or retrieval services.

38.1 Introduction

Provision of rules 60 relates to ascertaining of details of inward supplies by the recipient on the basis of details of outward supplies uploaded by the supplier(s) in Form GSTR 1/IFF.

38.2 Analysis

(a) In respect of the return for outward supplies filed by the supplier of goods / services (under section 37 of CGST / SGST Act, 2017), recipient of supply is required to match his inward supply details with that of the details uploaded by the supplier by way of furnishing Form GSTR-1. Hence, for this purpose provision of Form GSTR 2A & Form GSTR 2B has been made in GSTN.

→ Difference Between Form GSTR 2A & Form GSTR 2B is as follows:

Assertions	Form GSTR-2A	Form GSTR-2B
→ **Type of report**	It is a dynamic statement, the details of inward supplies vis-à-vis ITC will be available on a real-time basis.	It is a static statement, the details of inward supplies vis-à-vis ITC will not change after the report is generated.
→ **Context of the Report**	Inward supplies for a Given period. E.g., Purchases for the month of 'x' on Accrual Basis.	Inward Supplies available for availment of Credit in a given Tax period.
→ **Reconciliation**	Value between 2A and 2B would match on longer horizon. GSTR 1 is the mirror replica of GSTR 2A	Returns filed after the specified period data would be visible in subsequent period GSTR 2B
→ **Content**	It retrieves particulars of inward supplies vis-à-vis ITC from the following returns filed by the Supplier:	It retrieves particulars of inward supplies vis-à-vis ITC from the following returns filed by the Supplier:
	☼ Form GSTR 1	☼ Form GSTR 1

	☼ Form GSTR 5	☼ Form GSTR 5
	☼ Form GSTR 6	☼ Form GSTR 6
	☼ Form GSTR 7	IGST paid on import of goods from ICEGATE and goods brought in DTA from SEZ unit / SEZ developer on Bill of Entry
	☼ Form GSTR 8	
	IGST paid on import of goods from ICEGATE and goods brought in DTA from SEZ unit / SEZ developer on Bill of Entry.	
→ **Reporting of Eligibility**	It doesn't provide bifurcation of eligible ITC & ineligible ITC.	It does provide bifurcation of eligible ITC & ineligible ITC.
→ **Cut of date for Value Auto population**	Available on real-time.	GSTR-1 filed by 11th of Subsequent month IFF filed by 13th of Subsequent month GSTR-5 filed by 13th of Subsequent month GSTR-6 filed by 13th of Subsequent month Import from overseas by the cut-off date 13 of Subsequent month Import from SEZ by the cut-off date 13 of Subsequent month
→ **Report Generation Date**	Available on real-time.	Available only after the due date specified above. (ideally on i.e 14th of next month)
→ **Source for return**	The details showing in Form GSTR-2A do not auto-populate in Form GSTR-3B.	The details from Form GSTR-2B is auto-populated in Form GSTR-3B.

(b) The details uploaded by the supplier (in Form GSTR-1 or using IFF) and non-resident taxable person will be made available to the recipient in Part 'A' of Form GSTR-2A and the details of input tax credit distributed by input service distributor will be made available in Part 'B' of said Form i.e., Form GSTR 2A. The details will be available for

verification as and when the supplier has furnished Form GSTR-1. The details of tax deducted at source and tax collected at source will be made available in Part 'C' of Form GSTR 2A and the details of IGST paid on import of goods or goods brought in Domestic Tariff Area from SEZ unit or SEZ developer on a bill of entry will be made available in Part 'D'.

SUPPLIER TYPE	RETURN FORM	GSTR-2A OF THE RECEPIENT
Regular	GSTR-1/ IFF	Part-A of GSTR 2A
Non-Resident Taxable Person	GSTR-5	
Input Service Distributor	GSTR-6	Part-B of GSTR 2A
TDS Deductor - Sec. 51	GSTR-7	Part-C of GSTR 2A
TCS Collector - Sec. 52	GSTR-8	
Imported via Bill of Entry (BoE)		Part-D of GSTR 2A

Part A of **FORM GTSR 2A** will contain the following details (auto-populated on basis of Form GSTR 1 submitted by the supplier).

Sl. No. of Form 2A	Content of FORM GSTR 1 of supplier
3	Inward supplies received from a registered person other than the supplies attract reverse charge.
4	Inward supplies received from a registered person on which tax is to be paid on reverse charge.
5	Debit / Credit notes (including amendments thereof) received during current tax period.

(c) The details uploaded by the supplier, non-resident taxable person, ISD and details of import of goods will be made available to the recipient in Form GSTR 2B.

(d) Section 38 has been substituted vide the Finance Act, 2022 and the substituted section is applicable w.e.f. 01.10.2022. However, the rules for implementing the same are yet to be incorporated.

As per the provisions of section 38, Recipient will not be permitted ITC, whether wholly or partly, where details of said supplies being furnished by the registered person on the following scenarios:

a. within such period of taking registration, as may be prescribed; or

b. Who has defaulted in payment of taxes and such default continued for such period as may be prescribed; or

c. Where output tax payable in Form GSTR-1 exceeds the output tax paid in Form GSTR-3B by such limit as may be prescribed; or

d. Who has availed ITC excess ITC, within such period as may be prescribed, by such limit as may be prescribed; or

e. Who has defaulted in payment of taxes as per the provisions of section 49(12) i.e has not paid 1% total payout in cash, subject to such conditions and restrictions as may be prescribed; or

f. Such other class of person as may be prescribed.

38.3 Issues and Concerns

(i) As a recipient of supply one would have to be cautious since supply details are uploaded by his suppliers by way of filing of Form GSTR 1. The Recipient will only download and verify such details in Form GSTR 2A / Form GSTR 2B. The Recipient should ensure that, all his inward supplies on which he has availed input tax credit has been uploaded by his suppliers and the details of the same are available in Form GSTR-2A / Form GSTR 2B. By this, recipient of supply can avoid interest liability on taking of excess credit (in the eyes of exchequer) which may also effect his Goods and Service Tax Compliance rating in long run.

(ii) Further, recipient of credit shall be aware of the fact that, input tax credit in relation to supply received in a particular financial year say 2023-2024 (including transactions of credit / debit notes as the case may be), if not availed earlier, is to be availed on or before 30th November 2024 or date of filing of annual return in Form GSTR 9, whichever is earlier. With effect from 01.10.2022, the last date for availing ITC pertaining to financial year is earlier of 30th November following the end of the financial year or date of furnishing of annual return in Form GSTR 9. Before 01.10.2022, last date for availing input tax credit pertaining to financial year is earlier of the due date of filing the return for the month of September of the next financial year or date of filing of annual return. On this aspect, law is sacrosanct, and no additional time is allowed which will result in losing out on input tax credit.

Statutory Provisions

39. Furnishing of returns

(1) *[23][Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:*

[23] Substituted vide The Finance (No. 2) Act, 2019, notified through Notf No. 81/2020-CT dt. 10.11.2020 w.e.f. 10.11.2020.

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

(2) A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.]

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made 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 manner as may be prescribed, a return, electronically, within [24][thirteen] days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein

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

(7) [25][Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

[26][Provided that every registered person furnishing return under the proviso to sub-

[24]Substituted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022, applicable w.e.f. 01.10.2022 for "twenty".
[25]Substituted vide The Finance (No. 2) Act, 2019 w.e.f. 10.11.2020.
[26]Substituted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022 applicable w.e.f. 01.10.2022.

section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,—

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed]

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) [27][Where] any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) 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 [28][~~in the return to be furnished for the month or quarter during which such omission or incorrect particulars~~ in such form and manner as may be prescribed], subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the [29][thirtieth day of November] following [30][the end of the financial year to which such details pertain], or the actual date of furnishing of relevant annual return, whichever is earlier.

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[27]*Substituted vide The Finance Act 2022 notified through Notf No. 18/2022 - CT dt. 28.09.2022 applicable w.e.f. 01.10.2022.*

[28]*Substituted by The CGST (Amendment) Act, 2018. This amendment not yet enforced.*

[29]*Substituted vide The Finance Act, 2022 notified through Notf No. 18/2022 - CT dt. 28.09.2022, applicable w.e.f. 01.10.2022.*

[30]*Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. date to be notified.*

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods [31][or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

***Provided** that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period]*

[32][(11) A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return.]

Extract of the CGST Rules, 2017

[33][61. Form and manner of submission of monthly return

*(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under—*

(i) sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month:

(ii) proviso to sub-section (1) of section 39, for each quarter, or part thereof, for the class of registered persons mentioned in column (2) of the Table given below, on or before the date mentioned in the corresponding entry in column (3) of the said Table, namely:—

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[31] Substituted vide The Finance Act, 2022 notified through Notf No. 18/2022 - CT dt. 28.09.2022, applicable w.e.f. 01.10.2022.

[32] Inserted vide The Finance Act, 2023, dt. 31.03.2023, notified through Notf No. 28/2023-CT dt. 31.07.2023, w.e.f. 01.10.2023.

[33] Substituted vide Notf No. 82/2020-CT dt. 10.11.2020, w.e.f. 01.01.2021.

TABLE

S. No.	Class of registered persons	Due Date
(1)	(2)	(3)
1	*Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.*	*Twenty-second day of the month succeeding such quarter.*
2	*Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.*	*Twenty-fourth day of the month succeeding such quarter.*

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in FORM GSTR-3B.

(3) Every registered person required to furnish return, every quarter, under clause (ii) of sub-rule (1) shall pay the tax due under proviso to sub-section (7) of section 39, for each of the first two months of the quarter, by depositing the said amount in FORM GST PMT-06, by the twenty fifth day of the month succeeding such month:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in FORM GST PMT-06, for such class of taxable persons as may be specified therein:

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

Provided also that while making a deposit in FORM GST PMT-06, such a registered person may—

(a) for the first month of the quarter, take into account the balance in the electronic cash ledger.

(b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.

(4) The amount deposited by the registered persons under sub-rule (3) above, shall be debited while filing the return for the said quarter in FORM GSTR-3B, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the return in FORM GSTR-3B for the said quarter has been filed].

[34][61A. Manner of opting for furnishing quarterly return

(1) Every registered person intending to furnish return on a quarterly basis under proviso to sub-section (1) of section 39, shall in accordance with the conditions and restrictions notified in this regard, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised:

Provided that where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless the said registered person,-

(a) becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or

(b) opts for furnishing of return on a monthly basis, electronically, on the common portal:

Provided further that a registered person shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.

(2) A registered person, whose aggregate turnover exceeds 5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds 5 crore rupees.]

62. [35][Form and manner of submission of statement and return]

(1) Every registered person [36][paying tax under section 10 [37][~~or paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 2/2019-Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i) vide number G.S.R. 189(E), dated the 7th March, 2019~~] shall-

*(i) furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in **FORM GST CMP-08**, till the 18th day of the month succeeding such quarter; and*

*(ii) furnish a return for every financial year or, as the case may be, part thereof in **FORM GSTR-4**, till the thirtieth day of April following the end of such financial year]*

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[34] Inserted vide Notf No. 82/2020-CT dt. 10.11.2020.

[35] Substituted vide Notf. no. 20/2019-CT dt. 23.04.2019 for—"Form and manner of submission of quarterly return by the composition supplier".

[36] Substituted vide Notf No. 20/2019-CT dt. 23.04.2019.

[37] Omitted vide Notf No. 82/2020-CT dt. 10.11.2020.

electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

[38][~~Provided that the registered person who opts to pay tax under section 10 with effect from the first day of a month which is not the first month of a quarter shall furnish the return in FORM GSTR-4 for that period of the quarter for which he has paid tax under section 10 and shall furnish the returns as applicable to him for the period of the quarter prior to opting to pay tax under section 10~~.]

(2) Every registered person furnishing the [39][statement under sub-rule (1) shall discharge his liability towards tax or interest] payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger.

(3) The return furnished under sub-rule (1) shall include the-

(a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons; and

(b) consolidated details of outward supplies made.

(4) A registered person who has opted to pay tax under section 10 [40][****] from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

*Explanation.– For the purposes of this sub-rule, it is hereby declared that the person shall not be eligible to avail [41][~~****~~] input tax credit on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme [42][****].*

*(5) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish [43][a statement in **FORM GST CMP-08** for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish a return in **FORM GSTR-4** for the said period till the thirtieth day of April following the end of the financial year during which such withdrawal falls].*

(6) [44][****]

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[38] Inserted vide Notf No. 45/2017 - CT dt. 13.10.2017 and Omitted vide Notf No. 20/2019-CT dt. 23.04.2019

[39] Substituted vide Notf No. 20/2019-CT dt. 23.04.2019

[40] Omitted vide Notf No. 82/2020-CT dt. 10.11.2020.

[41] Omitted vide Notf No. 20/2019-CT dt. 23.04.2019.

[42] Omitted vide Notf No. 82/2020-CT dt. 10.11.2020.

[43] Substituted vide Notf No. 20/2019-CT dt. 23.04.2019.

[44] Omitted vide Notf No. 82/2020-CT dt. 10.11.2020.

63. 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 through a Facilitation Centre notified by the 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 the provisions of this Chapter 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.*

[45][64. Form and manner of submission of return by persons providing online information and data base access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India

Every registered person either providing online money gaming from a place outside India to a person in India, or providing online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or to a registered person other than a non-taxable online recipient, shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.]

65. Form and manner of submission of return by an Input Service Distributor.-

*Every Input Service Distributor shall, on the basis of details contained in **FORM GSTR-6A**, and where required, after adding, correcting or deleting the details, furnish electronically the return in **FORM GSTR-6**, containing the details of tax invoices on which credit has been received and those issued under section 20, through the common portal either directly or from a Facilitation Centre notified by the Commissioner.*

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

*(1) Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in **FORM GSTR-7** electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.*

(2) The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the [46][deductee ~~suppliers in Part C of FORM GSTR-2A and FORM-GSTR-4A~~] on the common portal after [47][~~the due date of~~] filing of FORM

[45] *Substituted vide Notf No. 51/2023-CT dt. 29.09.2023.*
[46] *Substituted vide Notf No. 31/2019 – CT dt. 28.06.2019.*
[47] *Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019.*

GSTR-7 [48][for claiming the amount of tax deducted in his electronic cash ledger after validation].

*(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in **FORM GSTR-7A** on the basis of the return furnished under sub-rule (1).*

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

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

*(2) [49][The details of tax collected at source under sub-section (1) of section 52 furnished by the operator under sub-rule (1) shall be made available electronically to each of the registered suppliers ~~The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers~~] [50][~~in Part C of FORM GSTR-2A~~] on the common portal after [51][~~the due date of~~] filing of **FORM GSTR-8** [52][for claiming the amount of tax collected in his electronic cash ledger after validation].*

[53][67A. Manner of furnishing of return or details of outward supplies by short messaging service facility.-

Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in FORM GSTR-3B or a Nil details of outward supplies under section 37 in FORM GSTR-1 or a Nil statement in FORM GST CMP-08 for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

Explanation. - For the purpose of this rule, a nil return or nil details of outward supplies or nil statement shall mean a return under section 39 or details of outward

[48] Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.
[49] Substituted vide Notf No. 38/2023 - CT dt. 04.08.2023, w.e.f. 01.10.2023.
[50] Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019.
[51] Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019.
[52] Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.
[53] Substituted vide Notf No. 79/2020 - CT dt. 15.10.2020.

supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1 or FORM GST CMP-08, as the case may be.]

68. Notice to non-filers of returns.-

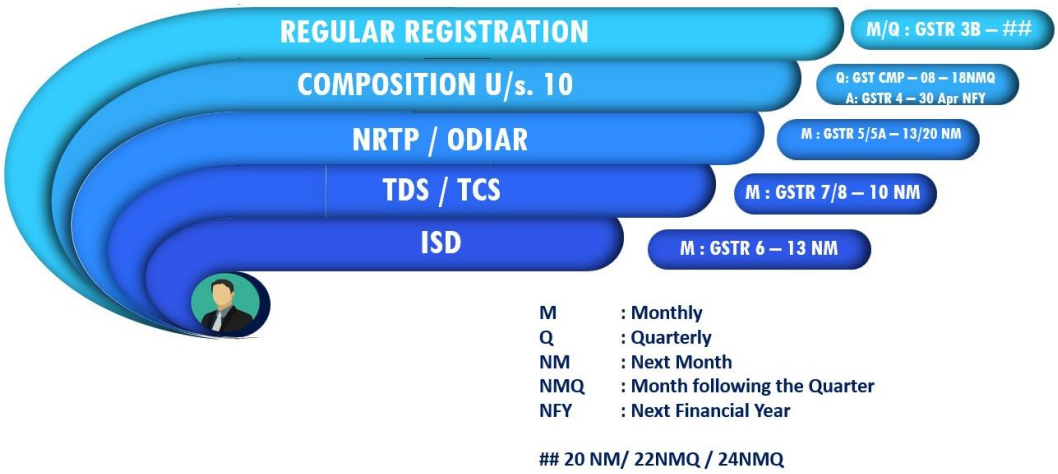
*A notice in **FORM GSTR-3A** shall be issued, electronically, to a registered person who fails to furnish return under section 39 or section 44 or section 45 or section 52.*

Related provisions of the Statute

Section or Rule	Description
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 2(117)	Definition of 'Valid Return'
Section 16	Eligibility and Conditions for Taking Input Tax Credit
Section 17	Apportionment of Credit and Blocked Credits
Section 22	Persons liable for registration
Section 24	Compulsory registration in certain cases
Section 37	Furnishing details of Outward supplies
Section 38	Communication of details of inward supplies and input tax credit
Section 41	Availment of input tax credit
Section 46	Notice to return defaulters
Section 47	Levy of late fee
Section 51	Tax deduction at source
Section 52	Collection of tax at source
Section 14 (IGST)	Special provision for payment of tax by a supplier of online information and database access or retrieval services.

39.1 Analysis

This section deals with filing of GST Return by persons registered under different provisions of this Act and rules made thereto.



Note: In case of a registered person who has opted for QRMP scheme, tax shall be paid through Form GST PMT-06 for first and second month of the Quarter on or before 25th of the next
month.

A. Return and due dates for payment of tax and filing of return for the registered person

Section Ref – (A)	Person Liable – (B)	FORM – (C)	CGST Rule – (D)	Due date for payment of tax – (E)	Due Date for filing of return - (F)	Periodicity – (G)
39 (1)	Regular Taxpayers (other than registered person covered under subsection 2, 3, 4 & 5 of Section 39) **Category - 1** **States:** Chhattisgarh, Madhya Pradesh, Gujarat,	Form GSTR-3B	Rule 61	On or before the due date of filing of return – As referred in column (F)	→ Registered person, who are not under QRMP Scheme – 20th of the next month. → Registered person, who have opted for QRMP Scheme and whose principal place of business is in – A. Category	Monthly / Quarterly

	Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep **Category – 2 States:** Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of				1 States – 22nd of the next month following the Quarter. B. Category 2 States – 24th of the next month following the Quarter.	

	Jammu and Kashmir, Ladakh, Chandigarh or Delhi					
39(2)	Composition Taxable persons	Form GSTR-4 / Form GST CMP - 08	Rule – 62	On or before the due date of filing of return – Ref column (F)	Form GST CMP-08 is to be filed within 18th day of the month succeeding the quarter. Form GSTR-4 is to be filed till 30th Apr after the end of the FY.	Quarterly / Annual.
39(3)	Any Registered person who is liable to deduct tax at source under section 51	GSTR-7	Rule – 66	On or before the due date of filing of return – As referred in column (F)	On or before 10th day of the subsequent month	Monthly
39(4)	Input Service Distributor (for distributing credits)	GSTR-6	Rule – 65	Not Applicable	On or before 13th day of the succeeding month	Monthly
39(5)	Non-Resident Taxable person	GSTR-5	Rule – 63	On or before the due date of filing of return – As referred in column (F)	Within 13 days after the end of the calendar month or within 7 days after the last day of the validity period of registration, whichever is earlier	
	Supplier located outside	GSTR-5A	Rule – 64	On or before due	On or before 20th day of the	Monthly

	taxable territory – making supply of online information and data base access or retrieval services from a place outside India to non-taxable online recipient.			date of filing of return – As referred in Column (F)	succeeding month (including part thereof)	

C. The extension of time limit for furnishing the returns

The Commissioner is empowered by sub-section (6) of section 39, for extending the due dates for furnishing the returns and on the basis of this, commissioner Central Tax / State Tax has issued Notification(s) extending due date(s) originally prescribed for filing of statement(s) / return(s), as the case may be.

Please refer '**Annexure – A'** at the end of the chapter, giving details of Notification(s) extending due date(s) for various statement(s) / return(s) prescribed under the GST laws.

D. Mandatory to file returns

Every registered person covered under section 39(1) & 39(2) shall furnish a return for every tax period whether or not any supplies of goods and/or services have been effected during such tax period. In other words, the person registered as regular taxpayer (including SEZ unit or developer) and person registered as a composition taxpayer, are obliged to file "NIL RETURN" even when there is / are no transaction(s) effected by them in any tax period.

E. Rectification of error and omission

(i) Every registered person (including ISD, person liable to deduct tax at source) who has furnished or is required to file a return in terms of this section, can on identification of any error or omission rectify the same in the tax period in which such error or omission is noticed by him.

(ii) Rectification, resulting in additional output tax or reduction in input tax credit shall be paid / reversed and the same would be subject to interest as prescribed in section 50 of this Act.

(iii) Such rectification of error or omission will not be allowed, when omission or incorrect particulars are discovered as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,

(iv) Further, no rectification of any error or omission will be allowed after the 30th day of November following the end of the financial year to which such details pertains, or the actual date of filing the relevant annual return, whichever is earlier.

(v) How to rectify the errors after filing of the Returns

a. Liability was under reported: In this case, Taxpayer can report this additional liability in the return of next month and pay tax with interest.

b. Liability was over reported and paid: In this case, Taxpayer may reduce this liability in the return of subsequent months or may claim refund of the same.

c. Liability was wrongly reported: If a Taxpayer realized that they had inadvertently, shown inter-State supply as intra-State supply or vice versa and submitted the return. Since, the return has already been filed, then the Taxpayer will have to report the inter State supply in their next month's liability and adjust their wrongly paid intra-State liability in the subsequent months returns or claim refund of the same.

d. Less Input tax credit availed: Taxpayer may avail such Input tax credit through Form GSTR-3B filed for the subsequent period subject to time limit as specified under GST Law.

e. Excess Input tax credit availed: Taxpayer will have to reverse excess availed Input tax credit either through Form GSTR-3B or through Form GST DRC-03 along with interest, if applicable.

F. Non-submission of previous tax period returns

A registered person will not be allowed to furnish a return for any tax period, unless returns for all previous tax periods or the details of outward supplies in Form GSTR-1, has been furnished by him.

G. Quarterly Return Monthly Payment Scheme [QRMP Scheme]

→ **Eligibility**

- A registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to 5 crore rupees in the preceding financial year, is eligible for the QRMP Scheme from 01.01.2021.
- Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

→ **Mode of exercising the option**

- Facility to avail the scheme on the common portal would be available throughout the year.

- A registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option. Once option has been exercised, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.
- Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.
- It is also clarified that such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year then he shall not be eligible for QRMP scheme, and he has to opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall no longer be eligible for the Scheme from the next quarter.
- It is further clarified vide *Circular No. 143/13/2020-GST dated 10.11.2020* that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme. Limit for eligibility of QRMP scheme will be calculated PAN wise.

→ **Filing Quarterly Return (i.e. Form GSTR-3B)**

- The registered persons would be required to furnish FORM GSTR-3B, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In FORM GSTR-3B, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein.
- The amount deposited by the registered person through Form GST PMT-06 in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's FORM GSTR-3B. However, any amount left after filing of that quarter's FORM GSTR-3B may either be claimed as refund or may be used for paying output tax liabilities in subsequent quarters.
- In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in FORM GSTR-3B for the relevant tax period.

→ **Making Monthly Payment**

- The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in FORM GST PMT-06, by the twenty fifth day of the month succeeding such month. While generating the challan, taxpayers should select Monthly payment for quarterly taxpayer as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months –

  (a) **Fixed Sum Method**: A facility is being made available on the portal for generating a pre-filled challan in FORM GST PMT-06 for an amount equal to thirty five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

  (b) **Self-Assessment Method**: The said persons, in any case, can pay the tax due in FORM GST PMT-06 by considering the tax liability on inward and outward supplies and the available input tax credit. . In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in FORM GSTR-2B, for every month.

→ **Applicability of Interest**

- For registered person making payment of tax by opting **Fixed Sum Method.**

  (i) No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as discussed above by the due date. In other words, if while furnishing return in FORM GSTR-3B, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made /received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the FORM GSTR-3B of the quarter by the due date.

  (ii) In case when system calculated amount of tax in FORM GST PMT-06 is not deposited by due date, interest would be payable at the applicable rate, from the due date of furnishing FORM GST PMT-06 till the date of making such payment.

  (iii) Further, in case FORM GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of section 50 of the CGST Act for the tax liability net of ITC.

- For registered person making payment of tax by opting **Self-Assessment Method.**
  - Interest amount would be payable as per the provision of Section 50 of the CGST Act for the amount of tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter.
- Interest payable, if any, shall be paid through FORM GSTR-3B.

→ **Applicability of Late Fee**

Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of section 47 of the Act. As per the scheme, the requirement to furnish the return under the proviso to sub-section (1) of section 39 is quarterly. Accordingly, late fee would be applicable for delay in furnishing of the said quarterly return / details of outward supply. It is clarified vide *Circular No. 143/13/2020- GST dated 10.11.2020* that no late fee would be applicable for delay in payment of tax in first two months of the quarter.

Return by Composition Taxpayer:

Every person registered as composition taxpayer is required to furnish following statement / return:

a) Statement on quarterly basis containing the details of payment of self-assessed tax in Form **GST CMP-08** within 18 days from the end of the relevant quarter to which such return pertains;

b) Return on annual basis in Form GSTR-4 on or before 30th day of April following the end of such financial year.

Last Date to furnish return u/s 39

The registered person is only allowed to furnish return u/s 39 for a tax period upto 3 years from the due date of furnishing the said return. This amendment came into effect w.e.f. 01.10.2023.

The Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return.

Please refer Annexure – A at the end of this chapter for changes in due dates and details of relevant notifications.

Return by Input Service Distributor:

Every person who is registered as an Input Service Distributor for the purpose of distributing credits relating to input services, is required to file a monthly return in Form GSTR-6 within 13 days of the succeeding month.

Please refer Annexure – A at the end of this chapter for changes in due dates and details of relevant notifications.

Return by persons registered for TDS u/s. 51 / TCS u/s. 52:

Provisions relating to deduction of tax at source (section 51) and collection of tax at source (section 52), have been implemented w.e.f. 1.10.2018. Return in Form GSTR-7 is required to be filed by a person liable to deduct tax at source and Statement in Form GSTR-8 is required to be filed by the person liable to collect tax at source in terms of GST provisions.

Valid Return:

Return furnished for any tax period will be considered as a valid return in terms of section 2(117) of the CGST Act, 2017, only when self-assessed taxes are paid in full.

Note -1: It is pertinent to mention that CBIC vide following circulars has clarified that how to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A.

S. No.	Circulars	Period
1	Circular No. 183/15/2022-GST dated 27.12.2022	FY 2017-18 and 2018-19
2	Circular No. 193/05/2023-GST dated 17.07.2023	01.04.2019 to 31.12.2021

Note-2: A *Circular No. 170/02/2022-GST dated 06.07.2022* has been issued by CBIC on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1 –reg.

Statutory provisions

40. First Return

Every registered 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 furnished by him after grant of registration.

40.1 Analysis

First Return – On grant of registration, a taxable person is required to file his first return. This section specifies the period for which this first return needs to be furnished. It is important to note that that there is no separate form / return prescribed for first return and will have to furnish first return in regular forms such as GSTR-3B or GSTR 4, as the case may be.

Furnishing details as part of first return would apply, only when the person has effected taxable supplies between the period of date of application for registration and the actual date of grant of registration, where such registration certificate is granted effective from the date of application for registration.

The details would generally include:

Transaction to be reported	Related Period
Outward supplies	From date on which he becomes liable to get registered till the date on which registration is granted

Applicability of provisions of revised invoice:

It is important to note that, one would have to issue or raise a revised invoice, to give effect for the taxes liable to be paid under GST laws. This would be applicable only when any person, receives a certificate of registration in Form GST REG-06 bearing the date of application for registration as effective date of registration, though such registration certificate may be received at a later date (Rule 53 of CGST Rules, 2017 should be referred).

Input tax credit on purchases prior to the date of registration:

As per the provisions of sec 18(1)(a), Person making an application for new registration within 30 days from the date on which he becomes liable to registration, shall be entitled to claim credit of input tax held in inputs as such, inputs contained in semi-finished goods or finished goods held in stock by such person on the day immediately preceding the date from which such person is liable to pay tax under the provisions of the Act i.e., the supplies made thirty days before the date of registration if the application for registration is made on thirtieth day, from the date on which he became liable to get registered **OR** the date on which he made an application for registration, if application for registration is made immediately when he became liable for registration.

Note: Input tax credit in relation to capital goods held as a fixed asset as on the above date, which will be used or is intended to be used in making taxable supply will not be available, as there is no specific provision in this regard. In such cases, person making an application for registration could affect purchases of such capital goods (if he is intending to purchase any) after receiving the said registration certificate.

Statutory provisions

41. [54]***[Availment of input tax credit***

(1) *Every registered person shall, subject* to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid

[54]*Substituted vide The Finance Act, 2022 notified through Notf No. 18/2022 – CT dt. 28.09.2022 w.e.f. 01.10.2022.*

by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided *that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.]*

Extract of CGST Rules, 2017

[55][Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.-

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.]

41.1 Introduction

This Section relates to claim of input tax credit on self-assessment basis by the registered person.

41.2 Analysis

All registered persons shall be eligible to avail eligible input tax credit on self-assessment basis. Amount availed as input tax credit on self-assessment basis, shall be credited to his electronic credit ledger.

The input tax credit availed by the registered person in respect of supplies of goods or services or both, shall be reversed along with applicable interest, if tax payable thereon has not been paid by the supplier.

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[55] *Inserted vide Notification No. 26/2022 – CT dt. 26.12.2022.*

Whether tax is paid or not has been linked with filing of Form GSTR-3B in term of Rule 37A of the CGST Rules. Where the Supplier has not filed Form GSTR-3B for the tax period corresponding to the said statement of outward supplies till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person (recipient), while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year.

If reversal is made in a return in FORM GSTR-3B after the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50

The registered person can re-claim the ITC, after the said supplier furnishes the return in FORM GSTR-3B for the said tax period. (reference to Sec 16(2)(c) read with Rule 37A of CGST Rules, 2017 can be made)

Statutory Provisions

[56][44. Annual return

[57][(1)] Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.]

[58][(2) A registered person shall not be allowed to furnish an annual return under Subsection (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return:

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[56]Substituted vide Finance Act, 2021 and notified vide Notf. No. 29/2021 CT-dt. 30.07.2021, w.e.f. 01.08.2021.

[57]Re-numbered as sub-section (1) by The Finance Act, 2023 through Notf No. 28/2023 CT dt. 31.07.2023. Applicable w.e.f 01.10.2023.

[58]Inserted by The Finance Act, 2023 notified through Notf No. 28/2023 CT dt. 31.07.2023. Applicable w.e.f. 01.10.2023.

Provided that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.]

Extract of the CGST Rules, 2017

80. Annual return-

*[59][(1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and anon-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in **FORM GSTR-9** on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:*

***Provided** that a person paying tax under section 10 shall furnish the annual return in **FORM GSTR-9A**.*

[60][(1A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-eighth day of February, 2022.]

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

*(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in **FORM GSTR-9C** along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.]*

[61][(3A) Notwithstanding anything contained in sub-rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022.]

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[59] Substituted vide Notf No. 30/2021-CT dt. 30.07.2021.

[60] Inserted vide Notf No. 40/2021-CT dt. 29.12.2021.

[61] Inserted vide Notf No. 40/2021-CT dt. 29.12.2021.

Related provisions of the Statute

Section or Rule	Description
Section 2(6)	Definition of 'aggregate turnover'
Section 2(94)	Definition of 'registered person'
Section 16	Eligibility and Conditions for taking Input Tax Credit
Section 17	Apportionment of Credits and Blocked Credits
Section 37	Furnishing details of Outward supplies
Section 38	Communication of details of inward supplies and input tax credit
Section 39	Furnishing of returns
Section 47	Levy of late fee
Section 49	Payment of tax, interest, penalty and other amounts

44.1 Introduction

This section applies to all registered taxable person other than person registered as,

a. An Input Service Distributor

b. A person liable to deduct tax under section 51 (TDS)

c. A person liable to collect tax at source under section 52 (TCS)

d. A casual tax Taxable person; and

e. Non-resident taxable person.

Due date for filing Annual Return is on or before 31st December, following the end of the financial year to which the said Annual return is to be submitted.

44.2 Analysis

(a) Every registered person (other than those covered in the exclusion list specified supra) is required to file an annual return in **FORM GSTR-9;**

(b) Person paying tax under composition scheme in terms of section 10 of this Act will be required to furnish annual return in **FORM GSTR 9A;**

(c) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement in **FORM GSTR - 9B;**

(d) Every registered person, (other than those covered in the exclusion list specified supra), whose aggregate turnover during a financial year **exceeds five crore rupees**, shall also furnish a self-certified reconciliation statement in **FORM GSTR-9C.**

The annual return is to be filed electronically by persons specified above, for every financial year on or before 31st day of December following the end of financial year, to which such annual return pertains.

Further, *Notification No. 47/2019-CT dated 09.10.2019* (as amended by *Notification No. 77/2020-CT dated 15.10.2020*) made filing of annual return under section 44(1) of CGST Act for F.Y. 2017-18, 2018-19 and 2019-20 optional for small taxpayers whose aggregate turnover is less than Rs. 2 crores and who have not filed the said return before the due date.

Notification No. 31/2021 - C.T. dated 30.07.2021, 10/2022-CT dated 05.07.2022 and 32/2023-CT dated 31.07.2023 exempt the registered person whose aggregate turnover in the financial year 2020-21, 21-22 and 22-23 is up to two crore rupees, from filing annual return for the said financial year.

Last date for furnishing Annual Return u/s 44

The registered person is only allowed to furnish an annual return u/s 44 for a tax period upto 3 years from the due date of furnishing the said annual return. This amendment came into effect w.e.f. 01.10.2023.

The Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.

Applicability of GSTR – 9 & GSTR-9C

Branch 1 (Turnover)	Branch 2 (Turnover)	Aggregate Total Turnover	Whether GSTR-9 is required?	Whether GSTR-9C is required?
Karnataka 100L	Tamil Nadu 5L	105L	Both states not required	Both states not required
Karnataka 199L	Assam 2L	201L	Both states required	Both states not required
Karnataka 510L	Kerala Re.1	510L	Both states required	Both states required
Karnataka 410L + 50L worth goods sent to Tamil Nadu(TN) branch	TN 50L	510L	Both states required	Both states required
Karnataka exclusively exempted goods 250L registration not taken	Tamil Nadu taxable goods 5L	255L	Both states required	Both states not required
Karnataka total	Mysore Branch	180L	Both states not	Both states not

sale 90L including 50L transfer to Mysore branch (with same GSTIN) from Bangalore	Sale 90L		required	required

Computation of Aggregate Total Turnover and requirement for filing annual return forms.

Nature of Income 1	**Nature of Income 2**	**Aggregate Total Turnover**	**Whether GSTR-9 is required ?**	**Whether GSTR-9C is required ?**
Rent from residential building 150L	Sale of garments 400L	550L	Required	Required
Sale of petrol 490L	engine oil 20L	510L	Required	Required
Salary received 180L	Sale of stationery 30L	30L	Not Required	Not Required
Sale of land 190L	Construction service 300L	300L	Required	Not Required
Sales 531L (including GST collected Rs. 81 Lacs)	-	450L	Required	Not Required
Sales 580L	Inward RCM 30L	580L	Required	Required

Statutory Provisions

45. Final return

Every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

Extract of the CGST Rules, 2017

81. Final return

*Every registered person required to furnish a final return under section 45, shall furnish such return electronically in **FORM GSTR-10** through the common portal either directly or through a Facilitation Centre notified by the Commissioner.*

Related provisions of the Statute

Section or Rule	Description
Section 18	Availability of credit in special circumstances
Section 25	Cancellation of registration
Section 37	Furnishing details of Outward supplies
Section 38	Communication of details of inward supplies and input tax credit
Section 39	Furnishing of returns
Section 47	Levy of late fee
Section 49	Payment of tax, interest, penalty and other amounts

45.1 Introduction

This section applies to all registered taxable person other than persons registered as,

a. Input Service Distributor;

b. A person paying tax under Section 51 (TDS);

c. A person paying tax under Section 52 (TCS);

d. Non-resident taxable person; and

e. A person paying tax under Section (10) composition levy.

45.2 Analysis

Every registered person whose registration is cancelled (suo moto or on an application made by applicant i.e., voluntary cancellation) shall furnish a final return in **FORM GSTR-10** through the common portal within 3 months from the date of cancellation (in case of voluntary cancellation) or date of order of cancellation (forceful cancellation by authority), whichever is later.

Details, which shall be made available in the Final return to be furnished in Form-GSTR-10, is available in CGST Rules, 2017 as amended on 18-04.2018 vide *Notification No. 21/2018 – CT dated 18.04.2018*.

Most important information is that this return would require a person whose registration is cancelled, to furnish, is as follows:

(a) The details of value (after adjustment of credit/debit notes) and quantity of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods /plant and machinery.

(b) The details of credit availed / reversed as per the provisions of GST law and tax payable if any.

(c) Details of amount to be payable on cancellation of registration through Electronic Cash Ledger/ Electronic Credit Ledger.

(d) Details of interest/ late fee if any payable and paid details.

(e) State-wise summary of supplies, rate-wise, should be uploaded in Table 7 of the Form GSTR-1.

Further, it is also important to take care of the following things while furnishing final return in **Form GSTR 10:**

While providing details of inputs held in stock, inputs contained in semi-finished goods or finished goods as the case may be:

- Where the tax invoices related to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock are not available, the registered person shall estimate the value of inputs available in stock (in all three forms) for the purpose of reversal, is based on the prevailing market price of the goods.

  Note: The details of stock for which invoices are not available, shall be certified by a Chartered Accountant or Cost Accountant and needs to be furnished with final return filed in Form GSTR 10.

- In case of capital goods / plant and machinery, the value for the purpose of arriving at the value of input tax to be reversed or paid, should be the invoice value reduced by 1/60th value per month or part thereof, from the date of invoice / purchase taking useful life as five years. For example: if the asset value was say ₹5 Lac and input tax credit availed on the same was ₹90,000 (at 18%), the said asset was put to use for say 48 months as on the date of cancellation of registration, then, in such case amount of reversal would be calculated as follows:

  Amount of input tax credit eligible, till the date of cancellation - ₹ 90,000 / 60 * 48 = ₹ 72,000/-.

  Amount of input tax credit to be reversed / paid in cash - ₹ 90,000 / 60 * 12 = ₹ 18,000/-.

Statutory Provisions

46. Notice to return defaulters

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

Related provisions of the Statute:

Section or Rule	Description
Section 37	Furnishing details of outward supplies
Section 38	Communication of details of inward supplies and input tax credit
Section 39	Furnishing of returns

Section 47	Levy of late fee
Section 49	Payment of tax, interest, penalty and other amounts
Section 62	Assessment of non-filers of returns

46.1 Introduction

This section applies to all registered persons who fail to furnish return under section 39 or section 44 and includes final return to be furnished in terms of section 45 of CGST Act, 2017.

46.2 Analysis

Notice to return defaulter

Notice in **FORM GSTR–3A** shall be issued electronically to a registered person, who has failed to file return(s) under section 39 (monthly return) or section 44 (annual return) or section 45(final return) requiring him to file all such return(s) within 15 days from the date of serving of notice. Though the section provides Notice in case of default for Annual Return also however, the format of Form GSTR-3A does not cover the same and therefore, the Form has been amended to provide notice for Annual Return default also w.e.f. 4th August, 2023.

It is important to note that, a registered person who has failed to furnish return(s) as prescribed under section 39 including final return under section 45, read with relevant rules thereto even after serving of notice as specified supra, the proper officer in such cases, can proceed with making a best judgement assessment on the basis of information available with him or gathered by him, anytime within 5 years from the due date prescribed for filing annual return under section 44 of CGST Act, 2017 for that particular year, and issue an assessment order to that effect (Reference to Section 62 read with Rule 100(1) can be made).

If the registered person furnishes valid return within 60 days (earlier 30 days) from the date of serving of order, the order issued shall be deemed to have been withdrawn but the liability to pay interest for delay in payment and late fee for delay in furnishing returns would continue. However, if the registered person fails to furnish valid return within a period of 60 days then he may furnish the same within a further period of 60 days on payment of additional late fee [Refer detailed discussion under section 62 with respect to notice under 46]

Statutory Provisions

47. Levy of late fee

(1) Any registered person who fails to furnish the details of outward [62][~~or inward~~] supplies required under section 37 [63][~~or section 38~~] or returns required under section 39 or

[62]*Omitted vide The Finance Act, 2022, notified through Notf No. 18/2022 -CT dt. 28.09.2022, applicable w.e.f. 01.10.2022.*

[63]*Omitted vide The Finance Act, 2022, notified through Notf No. 18/2022 -CT dt. 28.09.2022, applicable w.e.f. 01.10.2022.*

section 45 [64][or section 52] by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees. (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay 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 per cent. of his turnover in the State or Union territory.

Related provisions of the Statute:

Section or Rule	Description
Section 2(112)	Definition of 'Turnover in the State or Turnover in Union territory'
Section 37	Furnishing details of outward supplies
Section 38	Communication of details of inward supplies and input tax credit
Section 39	Furnishing of returns
Section 44	Annual return
Section 46	Notice to return defaulters
Section 49	Payment of tax, interest, penalty and other amounts

47.1 Introduction

This provision provides for late fee applicable on belated filing of statement / return(s) including belated filing of annual return.

47.2 Analysis

For late filing of return, late fee as specified below will apply:

Defaulted Return	***Late fee under CGST Act [Similar amount of late fee is applicable under SGST/UTGST Act]***	***Revised late fee under CGST Act [Similar amount of late fee is applicable under SGST/UTGST Act]***
Details of Outward Supplies (Ref: Section	₹ 100 per day of delay with cap on maximum late fee of	Late Fees has been reduced vide *N.N. 4/2018-CT dated*

[64]*Inserted vide The Finance Act 2022, notified through Notf No. 18/2022 -CT dt. 28.09.2022, applicable w.e.f. 01.10.2022.*

37) [Form GSTR-1]	₹ 5,000	*23.01.2018* (as amended) ₹ 25 per day each under CGST / SGST of delay In case of NIL return – ₹ 10 per day of delay **Maximum Late Fees from June 2021 onwards** Nil Return – 250 each under CGST / SGST AT upto ₹ 1.5 Cr in preceding FY - 1000 each under CGST / SGST AT more than 1.5 cr and upto ₹ 5 Cr in preceding FY - 2500 each under CGST / SGST
Monthly Return (Ref: Section 39) [Form GSTR- 3B]	₹ 100 per day of delay with cap on maximum late fee of ₹ 5,000	Late Fees has been reduced vide *N.N. 76/2018-CT dated 31.12.2018* (as amended) ₹ 25 per day each under CGST / SGST of delay In case of NIL return – ₹ 10 per day of delay **Maximum Late Fees from June 2021 onwards** Nil Return – 250 each under CGST / SGST AT upto ₹ 1.5 Cr in preceding FY - 1000 each under CGST / SGST AT more than 1.5 cr and upto ₹ 5 Cr in preceding FY - 2500 each under CGST / SGST
Details of Supplies made by Composition dealers (Ref: Sec 39(2)) [Form GSTR-4]	₹ 100 per day of delay with cap on maximum late fee of ₹ 5,000	Late Fees has been reduced vide N.N. 73/2017-CT dated 29.12.2017 (as amended) ₹ 25 per day of delay each under CGST/SGST In case of nil return – ₹ 10 per day of delay each under CGST/SGST

		Maximum Late Fees from FY 2021-22 onwards Nil Return – ₹ 250 each under CGST / SGST Others – ₹ 1,000 each under CGST / SGST
Annual Return (Ref: Sec 44 / Rule 80) [Form GSTR-9]	₹ 100 per day of delay with cap on maximum amount = 0.25% on turnover in the state / UT*	Late Fees has been reduced from FY 2022-23 onwards vide *N.N. 07/2023-CT dated 31.03.2023 (as amended).* AT upto ₹5 cr in relevant FY – ₹ 25 per day each under CGST/SGST Maximum- 0.02 % of turnover in state /UT each under CGST/SGST AT more than 5cr and upto ₹ 20 cr in relevant FY - ₹ 50 per day each under CGST/SGST Maximum- 0.02 % of turnover in state /UT each under CGST/SGST AT more than 20 cr in relevant FY - ₹ 100 per day each under CGST/SGST Maximum- 0.25 % of turnover in state /UT each under CGST/SGST
Final Return (Ref: Sec 45) [Form GSTR-10]	₹ 100 per day of delay with cap on maximum late fee of ₹ 5,000	No revision
Tax Collected at Source (Ref: Sec 52) [Form GSTR-8]	₹ 100 per day of delay with cap on maximum late fee of ₹ 5,000	Late Fees applicable w.e.f. 1st October 2022 vide N.N. 18/2022-CT dated 28.09.2022.

Note:

AT in PFY - aggregate turnover in the preceding financial year

AT – Aggregate Turnover

(Refer Note No. 2 at the end of the chapter, for details of Notification reducing late fee for returns to be furnished in Form GSTR 1 and GSTR 3B).

*"turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Note-1: Reduction / waiver of late fee if Forms GSTR-4, GSTR-9 and GSTR-10 of earlier period filed within April to August, 2023:

Form	Notification No.	Financial Years / Conditions	If filed within	Maximum Late Fees
GSTR-9 [Annual Return]	07/2023-CT dated 31.03.2023 (as amended by 25/2023-CT dated 17.07.2023)	2017-18, 2018-19, 2019-20, 2020-21, 2021-22	From 01st April 2023 to 31st August 2023	Rs. 10,000 each under CGST and SGST/UTGST
GSTR-10 [Final Return]	08/2023-CT dated 31.03.2023 (as amended by 26/2023-CT dated 17.07.2023)	Who fails to furnish the return by due dates	From 01st April 2023 to 31st August 2023	Rs. 500 each under CGST and SGST/UTGST
GSTR-4 [Return for Composition Supplier]	02/2023-CT dated 31.03.2023 (as amended by 22/2023-CT dated 17.07.2023)	Quarterly from July, 2017 to March, 2019 or for the FY 2019-20, 2020-21, 2021-22	From 01st April 2023 to 31st August 2023	Nil Return- Nil Others – Rs. 250 each under CGST and SGST/UTGST

Statutory Provisions

48. Goods and services tax practitioners

(1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.

(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, [65]~~[the details of inward supplies under section 38]~~ and the return under section 39 or section 44 or section 45 [66][and to perform such other functions] in such manner as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.

Extract of the CGST Rules, 2017

83. Provisions relating to a goods and services tax practitioner.-

(1) An application in FORM GST PCT-01 may be made electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner for enrolment as goods and services tax practitioner by any person who,

(i) is a citizen of India;

(ii) is a person of sound mind;

(iii) is not adjudicated as insolvent;

(iv) has not been convicted by a competent court;

and satisfies any of the following conditions, namely:-

(a) that he is a retired officer of the Commercial Tax Department of any State Government or of the [67][Central Board of Indirect Taxes] and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower than the rank of a Group-B gazetted officer for a period of not less than two years; or

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[65] Omitted vide The Finance Act 2022, notified through Notf No. 18/2022 - CT dt. 28.09.2022. Applicable w.e.f. 01.10.2022.

[66] Inserted vide The Central Goods & Services (Amendment) Act. 2018 notified through Notf No. 02/2019-CT dt. 29.01.2019. Applicable w.e.f. 01.02.2019.

[67] Substituted vide Notf. No. 03/2019-CT dt. 29.01.2019 w.e.f 01.02.2019 for "Central Board of Excise".

(b) that he has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years;

(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 recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or

(iii) any other examination notified by the Government, on the recommendation of the Council, for this purpose; or

(iv) has 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.

(2) On receipt of the application referred to in sub-rule (1), the officer authorised in this behalf shall, after making such enquiry as he considers necessary, either enrol the applicant as a goods and services tax practitioner and issue a certificate to that effect in FORM GST PCT-02 or reject his application where it is found that the applicant is not qualified to be enrolled as a goods and services tax practitioner.

(3) The enrolment made under sub-rule (2) shall be valid until it is cancelled

Provided that no person enrolled as a goods and services tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Commissioner on the recommendations of the Council:

Provided further that no person to whom the provisions of clause (b) of [68][sub-rule] (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of [69][thirty months] from the appointed date.

(4) If any goods and services tax practitioner is found guilty of misconduct in connection with any proceedings under the Act, the authorised officer may, after giving him a notice to show cause in FORM GST PCT-03 for such misconduct and after giving him a reasonable opportunity of being heard, by order in FORM GST PCT -04 direct that he shall henceforth be disqualified under section 48 to function as a goods and

[68] Substituted vide Notf No. 17/2017-CT dt. 27.07.2017 w.e.f. 01.07.2017 for "sub-section".
[69] Substituted vide Notf. No. 03/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019 for "eighteen months".

services tax practitioner.

(5) Any person against whom an order under sub-rule (4) is made may, within thirty days from the date of issue of such order, appeal to the Commissioner against such order.

(6) Any registered person may, at his option, authorise a goods and services tax practitioner on the common portal in FORM GST PCT-05 or, at any time, withdraw such authorisation in FORM GST PCT-05 and the goods and services tax practitioners authorised shall be allowed to undertake such tasks as indicated in the said authorisation during the period of authorisation.

(7) Where a statement required to be furnished by a registered person has been furnished by the goods and services tax practitioner authorised by him, a confirmation shall be sought from the registered person over email or SMS and the statement furnished by the goods and services tax practitioner shall be made available to the registered person on the common portal:

Provided that where the registered 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 statement furnished by the goods and services tax practitioner.

[70][(8) A goods and services tax practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by him to-

(a) furnish the details of outward [71][~~and inward~~] supplies;

(b) furnish monthly, quarterly, annual or final return;

(c) make deposit for credit into the electronic cash ledger;

(d) file a claim for refund;

(e) file an application for amendment or cancellation of registration;

(f) furnish information for generation of e-way bill;

(g) furnish details of challan in FORM GST ITC-04;

(h) file an application for amendment or cancellation of enrolment under rule 58; and

(i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme

Provided that where any application relating to a claim for refund or an application for amendment or cancellation of registration or where an intimation to pay tax under composition scheme or to withdraw from such scheme has been submitted by the goods and services tax practitioner authorised by the registered person, a

[70] Substituted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019.
[71] Omitted vide Notf No. 19/2022 - CT dt. 01.10.2022 w.e.f. 01.10.2022.

confirmation shall be sought from the registered person and the application submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be further proceeded with until the registered person gives his consent to the same.]

(9) Any registered person opting to furnish his return through a goods and services tax practitioner shall-

(a) give his consent in FORM GST PCT-05 to any goods and services tax practitioner to prepare and furnish his return; and

(b) before confirming submission of any statement prepared by the goods and services tax practitioner, ensure that the facts mentioned in the return are true and correct.

(10) The goods and services tax practitioner 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.

(11) A goods and services tax practitioner enrolled in any other State or Union territory shall be treated as enrolled in the State or Union territory for the purposes specified in sub-rule (8).

***[72][83A. Examination of Goods and Services Tax Practitioners**.-*

(1) Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule, shall pass an examination as per sub-rule (3) of the said rule.

(2) The National Academy of Customs, Indirect Taxes and Narcotics (hereinafter referred to as "NACIN") shall conduct the examination.

(3) Frequency of examination.- The examination shall be conducted twice in a year as per the schedule of the examination published by NACIN every year on the official websites of the Board, NACIN, common portal, GST Council Secretariat and in the leading English and regional newspapers.

(4) Registration for the examination and payment of fee.-

(i) A person who is required to pass the examination shall register online on a website specified by NACIN.

(ii) A person who registers for the examination shall pay examination fee as specified by NACIN, and the amount for the same and the manner of its payment

[72] Inserted vide Notf No. 60/2018 - CT dt. 30.10.2018.

shall be specified by NACIN on the official websites of the Board, NACIN and common portal.

(5) Examination centers.- The examination shall be held across India at the designated centers. The candidate shall be given an option to choose from the list of centers as provided by NACIN at the time of registration.

(6) Period for passing the examination and number of attempts allowed.-

[73]*[(i)* Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule is required to pass the examination within the period as specified in the second proviso of sub-rule (3) of the said rule.] .

(ii) A person required to pass the examination may avail of any number of attempts but these attempts shall be within the period as specified in clause (i).

(iii) A person shall register and pay the requisite fee every time he intends to appear at the examination.

(iv) In case the goods and services tax practitioner having applied for appearing in the examination is prevented from availing one or more attempts due to unforeseen circumstances such as critical illness, accident or natural calamity, he may make a request in writing to the jurisdictional Commissioner for granting him one additional attempt to pass the examination, within thirty days of conduct of the said examination. NACIN may consider such requests on merits based on recommendations of the jurisdictional Commissioner.

(7) Nature of examination.-The examination shall be a Computer Based Test. It shall have one question paper consisting of Multiple Choice Questions. The pattern and syllabus are specified in Annexure-A.

(8) Qualifying marks. - A person shall be required to secure fifty per cent. Of the total marks.

(9) Guidelines for the candidates.-

(i) NACIN shall issue examination guidelines covering issues such as procedure of registration, payment of fee, nature of identity documents, provision of admit card, manner of reporting at the examination center, prohibition on possession of certain items in the examination center, procedure of making representation and the manner of its disposal.

(ii) Any person who is or has been found to be indulging in unfair means or practices shall be dealt in accordance with the provisions of sub-rule (10). An illustrative

[73]*Substituted vide Notf No. 49/2019 –CT dt 09.10.2019.*

list of use of unfair means or practices by a person is as under: -

(a) obtaining support for his candidature by any means;

(b) impersonating;

(c) submitting fabricated documents;

(d) resorting to any unfair means or practices in connection with the examination or in connection with the result of the examination;

(e) found in possession of any paper, book, note or any other material, the use of which is not permitted in the examination center;

(f) communicating with others or exchanging calculators, chits, papers etc. (on which something is written);

(g) misbehaving in the examination center in any manner;

(h) tampering with the hardware and/or software deployed; and

(i) attempting to commit or, as the case may be, to abet in the commission of all or any of the acts specified in the foregoing clauses.

(10) Disqualification of person using unfair means or practice.- If any person is or has been found to be indulging in use of unfair means or practices, NACIN may, after considering his representation, if any, declare him disqualified for the examination.

(11) Declaration of result.- NACIN shall declare the results within one month of the conduct of examination on the official websites of the Board, NACIN, GST Council Secretariat, common portal and State Tax Department of the respective States or Union territories, if any. The results shall also be communicated to the applicants by e-mail and/or by post.

(12) Handling representations.- A person not satisfied with his result may represent in writing, clearly specifying the reasons therein to NACIN or the jurisdictional Commissioner as per the procedure established by NACIN on the official websites of the Board, NACIN and common portal.

(13) Power to relax.- Where the Board or State Tax Commissioner is of the opinion that it is necessary or expedient to do so, it may, on the recommendations of the Council, relax any of the provisions of this rule with respect to any class or category of persons.

Explanation :- For the purposes of this sub-rule, the expressions –

(a) "jurisdictional Commissioner" means the Commissioner having jurisdiction over the place declared as address in the application for enrolment as the GST Practitioner in FORM GST PCT-1. It shall refer to the Commissioner of Central Tax if the enrolling authority in FORM GST PCT-1 has been selected as Centre, or the Commissioner of State Tax if the enrolling authority in FORM GST PCT-1

has been selected as State;

(b) NACIN means as notified by notification No. 24/2018-Central Tax, dated 28.05.2018.

Annexure-A [See sub-rule 7] *Pattern and Syllabus of the Examination*	
PAPER: GST Law & Procedures:	
Time allowed:	*2 hours and 30 minutes*
Number of Multiple Choice Questions:	*100*
Language of Questions:	*English and Hindi*
Maximum marks:	*200*
Qualifying marks:	*100*
No negative marking	
Syllabus:	
1	*The Central Goods and Services Tax Act, 2017*
2	*The Integrated Goods and Services Tax Act, 2017*
3	*All The State Goods and Services Tax Acts, 2017*
4	*The Union territory Goods and Services Tax Act, 2017*
5	*The Goods and Services Tax (Compensation to States) Act, 2017*
6	*The Central Goods and Services Tax Rules, 2017*
7	*The Integrated Goods and Services Tax Rules, 2017*
8	*All The State Goods and Services Tax Rules, 2017*
9	*Notifications, Circulars and orders issued from time to time under the said Acts and Rules.*

]

[74]***[83B. Surrender of enrolment of goods and service tax practitioner.-***

(1) A goods and services tax practitioner seeking to surrender his enrolment shall electronically submit an application in FORM GST PCT-06, at the common portal, either directly or through a facilitation centre notified by the Commissioner.

(2) The Commissioner, or an officer authorised by him, may after causing such enquiry as deemed fit and by order in FORM GST PCT-07, cancel the enrolment of such practitioner.]

[74] *Inserted vide Notf. No. 33/2019-CT dt. 18.07.2019 with effect from a date to be notified.*

84. Conditions for purposes of appearance.-

(1) No person shall be eligible to attend before any authority as a goods and services tax practitioner in connection with any proceedings under the Act on behalf of any registered or un-registered person unless he has been enrolled under rule 83.

(2) A goods and services tax practitioner attending on behalf of a registered or an unregistered person in any proceedings under the Act before any authority shall produce before such authority, if required, a copy of the authorisation given by such person in FORM GST PCT-05.

48.1 Introduction

This provision relates to:

a. Procedure to be followed in appointment / termination of specified persons as Goods and Service Tax Practitioners (GSTPs)

b. Activities, which can be performed or services that can be offered by a person eligible for appointment as GST practitioner.

48.2 Analysis

The procedure as prescribed in Rule 83 of CGST Rules, 2017 supra, is to be followed to enrol as a Goods and Services Tax Practitioner (GSTP). The eligibility and disqualifications from enrolment as GSTP is also provided in the said rule.

Further, procedure and purposes for which a registered person can appoint a GSTP and duties of GSTP in relation to activities specified, is also clearly provided in the rule.

Activities, such as application for refund and cancellation of registration it is important to note that though the application is made by GSTP, approval / confirmation of the information by the registered person of information submitted by GSTP is mandatory.

A GST practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by the registered person viz,

(a) furnish details of outward and inward supplies;

(b) furnish monthly, quarterly, annual or final return;

(c) make deposit for credit into the electronic cash ledger;

(d) file a claim for refund; and

(e) file an application for amendment or cancellation of registration.

Notes to the Chapter:

Non-filing of GST Returns for two consecutive tax periods/ quaters would debar the taxpayer from generating any e-way bill

As per the provisions of rule 138E of the CGST Rules, the Government has put restriction on all the supplies in relation of e-way generation, who have not furnished:

- Return for a consecutive period of two tax periods, in case of person other than Composition Tax Payers;
- Statement in Form GST CMP-08 for two consecutive quarters, in case of Composition Taxpayer.

This has been done with an intention to force non-compliant businesses to file returns regularly.

ANNEXURE - A: REVISED / APPLICABLE DUE DATES

01. GSTR – 1 (Quarterly)

Tax period	Due date	Reference
July 2017 to Sep 2017	31st Oct 2018	Notification No. 43/2018-Central tax, dated 10-9-2018
Oct 2017 to Dec 2017	31st Oct 2018	
Jan 2018 to Mar 2018	31st Oct 2018	
Apr 2018 to Jun 2018	31st Oct 2018	
Jul 2018 to Sep 2018	31st Oct 2018	
Jul 2018 to Sep 2018	15th Nov 2018	Notification No. 43/2018, dated 10-9-2018- Registered in the State of Kerala; Registered persons whose principal place of business is in Kodagu district in the State of Karnataka and registered persons whose principal place of business is in Mahe in the Union territory of Puducherry.
Jul 2018 to Sep 2018	30th Nov 2018	Notification No. 64/2018, dated 29-11-2018- For the registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh.
Jul 2017 to Dec 2018	31st Mar 2019	Notification No. 71/2018, dated 31-12-2018- For the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of notification No. 31/2018 Newly Migrated
Oct 2018 to Dec 2018	31st Jan 2019	Notification No. 43/2018-Central tax, dated 10-9-2018
Jan 2019 to Mar 2019	30th Apr 2019	Notification No. 43/2018-Central tax, dated 10-9-2018
Apr 2019 to Jun 2019	31st Jul 2019	Notification No. 11/2019-Central tax, dated 7-3-2019

Jul 2019 to Sep 2019	31st Oct 2019	Notification No. 27/2019-Central tax, dated 28-6-2019
	24th Mar 2020	Notification No. 24/2020-Central tax, dated 23-3-2020- For the registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir.
Oct 2019 to Dec 2019	31st Jan 2020	Notification No. 45/2019-Central tax, dated 9-10-2019
	24th Mar 2020	Notification No. 21/2020-Central tax, dated 23-3-2020- For registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh.
Jan 2020 to Mar 2020	30th Apr 2020	Notification No. 45/2019-Central tax, dated 9-10-2019
Apr 2020 to Jun 2020	31st Jul 2020	Notification No. 27/2020-Central tax, dated 23-3-2020
Jul 2020 to Sep 2020	31st Oct 2020	Notification No. 27/2020-Central tax, dated 23-3-2020
Oct 2020 to Dec 2020	13th Jan 2021	Notification No. 74/2020-Central tax, dated 15-10-2020
Jan 2021 to Mar 2021	13th Apr 2021	Notification No. 74/2020-Central tax, dated 15-10-2020
Apr 2021 to Jun 2021	13th Jul 2021	Notification No. 83/2020-Central tax, dated 10-11-2020
Jul 2021 to Sep 2021	13th Oct 2021	
Oct 2021 to Dec 2021	13th Jan 2022	
Jan 2022 to Mar 2022	13th Apr 2022	
Apr 2022 to Jun 2022	13th Jul 2022	Notification No. 83/2020-Central tax, dated 10-11-2020
Jul 2022 to Sep 2022	13th Oct 2022	
Oct 2022 to Dec 2022	13th Jan 2022	

02. GSTR – 1 (Monthly)

Tax period	Due date	Reference
Jul 2017 to Sep 2018	31st Oct 2018	Notification No. 44/2018-Central tax, dated 10-9-2018
Jul 2017 to Feb	31st Mar 2019	Notification No. 72/2018-Central tax, dated 31-12-

2019		2018- For the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of notification No. 31/2018 Newly Migrated
Sep 2018 to Oct 2018	30th Nov 2018	Notification No. 63/2018-Central tax, dated 29-11-2018- For registered persons whose principal place of business is in the Srikakulam district in the State of Andhra Pradesh.
Oct 2018	11th Nov 2018	Notification No. 44/2018-Central tax, dated 10-9-2018
Oct 2018	20th Dec 2018	Notification No. 63/2018-Central tax, dated 29-11-2018- For registered persons whose principal place of business is in Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu
Nov 2018	11th Dec 2018	Notification No. 44/2018-Central tax, dated 10-9-2018
Dec 2018	11th Jan 2019	
Jan 2019	11th Feb 2019	
Feb 2019	11th Mar 2019	
Mar 2019	13th Apr 2019	Notification No. 17/2019-Central tax, dated 10-4-2019
Apr 2019	11th May 2019	Notification No. 12/2019-Central tax, dated 7-3-2019
Apr 2019	10th Jun 2019	Notification No. 23/2019-Central tax, dated 11-5-2019- For registered persons whose principal place of business is in the districts of Angul, Balasore, Bhadrak , Cuttack , Dhenkanal , Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha.
May 2019	11th Jun 2019	Notification No. 12/2019-Central tax, dated 7-3-2019
Jun 2019	11th Jul 2019	Notification No. 12/2019-Central tax, dated 7-3-2019
Jul 2019	11th Aug 2019	Notification No. 28/2019-Central tax, dated 28-6-2019
Aug 2019	11th Sep 2019	
Sep 2019	11th Oct 2019	

Jul 2019 to Sep 2019	24th Mar 2020	Notification No. 23/2020-Central tax, dated 23-3-2020- For registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir
Oct 2019	11th Nov 2019	Notification No. 46/2019-Central tax, dated 9-10-2019
Oct 2019	24th Mar 2020	Notification No. 22/2020-Central tax, dated 23-3-2020- For registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir
Nov 2019	11th Dec 2019	Notification No. 46/2019-Central tax, dated 9-10-2019
Nov 2019 to Feb 2020	24th Mar 2020	Notification No. 22/2020-Central tax, dated 23-3-2020- For registered persons whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh.
Nov 2019	31st Dec 2019	Notification No. 76/2019-Central tax, dated 26-12-2019- For registered persons whose principal place of business is in the State of Assam, Manipur or Tripura.
Dec 2019	11th Jan 2020	Notification No. 46/2019-Central tax, dated 9-10-2019
Jan 2020	11th Feb 2020	
Feb 2020	11th Mar 2020	
Mar 2020	11th Apr 2020	
Apr 2020	11th May 2020	Notification No. 28/2020-Central tax, dated 23-3-2020
May 2020	11th Jun 2020	
Jun 2020	11th Jul 2020	
Jul 2020	11th Aug 2020	
Aug 2020	11th Sep 2020	
Sep 2020	11th Oct 2020	

→ **From October 2020:**

The due date for filing Form GSTR 1 (monthly) is 11th day of the month succeeding such tax period as per Notification No. 83/2020 – C.T. dated 10-11-2020. However, the said date was extended for the following tax period:

Tax period	Due date	Reference

<table>
<tr><td>Apr 2021</td><td>26th May 2021</td><td>Notification No. 12/2021-Central tax, dated 1-5-2021</td></tr>
<tr><td>May 2021</td><td>26th Jun 2021</td><td>Notification No. 17/2021-Central tax, dated 1-6-2021</td></tr>
<tr><td>Nov 2022</td><td>11th Dec 2022 or 13th Dec 2022</td><td>No.25/2022 – C.T. dated 13.12.2022 extended the due date for furnishing of Form GSTR-1 (from 11.12.2023 to 13.12.2023) for registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tiruvannamalai, Ranipet, Vellore, Villupuram, Cuddalore, Thiruvarur, Nagapattinam, Mayiladuthurai and Thanjavur in the State of Tamil Nadu.</td></tr>
<tr><td>Apr, May, June & July 2023</td><td>25th August, 2023</td><td>Notification No. 41/2023-Central Tax dated 25.08.2023: For registered persons whose principal place of business is in the State of Manipur.
Earlier the date was extended as follows:
<table>
<tr><td>April 2023</td><td>31st May 2023</td><td>Notification No. 11/2023-Central Tax dated 24.05.2023</td></tr>
<tr><td>April & May 2023</td><td>30th June 2023</td><td>Notification No. 14/2023-Central Tax dated 19.06.2023</td></tr>
<tr><td>April, May & June 2023</td><td>31st July 2023</td><td>Notification No. 18/2023-Central Tax dated 17.07.2023</td></tr>
</table></td></tr>
</table>

03. GSTR-1 (IFF)

The due date for filing invoice furnishing facility (IFF) as per Notification No. 82/2020-Central tax, dated 10-11-2020 is the 13th of the succeeding month. However, CBIC vide below-referred notification extended the due date for the given tax periods:

Tax period	Due date	Reference
Apr 2021	28th May 2021	Notification No. 13/2021- Central Tax dated 01.05.2021
May 2021	28th Jun 2021	Notification No. 27/2021 - Central Tax dated 01.06.2021

04. GSTR – 3B

Tax period	Due date	Reference

Jul 2017	25th Aug 2017	Notification No. 24/2017-Central Tax, dated 21-8-2017
Jul 2017 to Feb 2019	31st Mar 2019	Notification No. 69/2018-Central tax, dated 31-12-2018- For the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of notification No. 31/2018 Newly Migrated
Aug 2017	20th Sep 2017	Notification No. 35/2017-Central Tax, dated 15-9-2017
Sep 2017	20th Oct 2017	
Oct 2017	20th Nov 2017	
Nov 2017	20th Dec 2017	
Dec 2017	22nd Jan 2018	Notification No. 2/2018-Central Tax, dated 20-1-2018
Jan 2018	20th Feb 2018	Notification No. 56/2017-Central Tax, dated 15-11-2017
Feb 2018	20th Mar 2018	
Mar 2018	20th Apr 2018	
Apr 2018	22nd May 2018	Notification No.23/2018-Central Tax, Dated 18-5-2018
May 2018	20th Jun 2018	Notification no. 16/2018-Central Tax, dated 23-3-2018
Jun 2018	20th Jul 2018	
Jul 2018	24th Aug 2018	Notification No.35/2018-Central Tax, dated 21-8-2018
Jul 2018	5th Oct 2018	Notification No.36/2018-Central Tax, dated 24-8-2018- For (i) registered persons in the State of Kerala; (ii) registered persons whose principal place of business is in Kodagu district in the State of Karnataka; and (iii) registered persons whose principal place of business is in Mahe in the Union territory of Puducherry.
Aug 2018	10th Oct 2018	
Aug 2018	20th Sep 2018	Notification No.34/2018-Central Tax, dated 10-8-2018
Sep 2018	25th Oct 2018	Notification No.55/2018-Central Tax, dated 21-10-2018
Oct 2018	20th Nov 2018	Notification No.34/2018-Central Tax, dated 10-8-2018
Sep 2018 to	30th Nov 2018	Notification No.62/2018-Central Tax, dated 29-11-

Oct 2018		2018- For registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh
Oct 2018	20th Dec 2018	Notification No.62/2018-Central Tax, dated 29-11-2018- For registered persons whose principal place of business is in Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu
Nov 2018	20th Dec 2018	Notification No.34/2018-Central Tax, dated 10-8-2018
Dec 2018	20th Jan 2019	Notification No.34/2018-Central Tax, dated 10-8-2018
Jan 2019	22nd Feb 2019	Notification No.9/2019-Central Tax, dated 20-2-2019
Jan 2019	28th Feb 2019	Notification No.9/2019-Central Tax, dated 20-2-2019- For registered persons whose principal place of business is in the State of Jammu and Kashmir.
Feb 2019	20th Mar 2019	Notification No.34/2018-Central Tax, dated 10-8-2018
Mar 2019	23rd Apr 2019	Notification No. 19/2019 - Central Tax, dated 22-4-2019
Apr 2019	20th May 2019	Notification No. 13/2019 -Central Tax, dated 7-3-2019
Apr 2019	20th Jun 2019	Notification No. 24/2019-Central Tax, dated 11-5-2019- For registered persons whose principal place of business is in the districts of Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha.
May 2019	20th Jun 2019	Notification No. 13/2019 -Central Tax, dated 7-3-2019
Jun 2019	20th Jul 2019	
Jul 2019	22nd Aug 2019	Notification No. 37/2019 -Central Tax, dated 21-8-2019
Jul 2019	20th Sep 2019	Notification No. 37/2019 -Central Tax, dated 21-8-

		2019- For registered persons whose principal place of business is in the district mentioned in column (3) of the Table below, of the State as mentioned in column (2) of the said Table*
Jul 2019	20th Sep 2019	Notification No. 37/2019 -Central Tax, dated 21-8-2019- For registered persons whose principal place of business is in the State of Jammu and Kashmir.
Aug 2019	20th Sep 2019	Notification No. 29/2019-Central Tax, dated 28-6-2019
Sept 2019	20th Oct 2019	Notification No. 29/2019-Central Tax, dated 28-6-2019
Jul 2019 to Sep 2019	24th Mar 2020	Notification No. 26/2020-Central Tax, dated 23-3-2020 for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir,

***TABLE**

S.No.	Name of State	Name of District
(1)	(2)	(3)
1.	Bihar	Araria, Kishanganj, Madhubani, East Champaran, Sitamarhi, Sheohar, Supaul, Darbhanga, Muzaffarpur, Saharsa, Katihar, Purnia, West Champaran
2.	Gujarat	Vadodara
3.	Karnataka	Bagalkot, Ballari, Belagavi, Chamarajanagar, Chikkamagalur, Dakshina Kannada, Davanagere, Dharwad, Gadag, Hassan, Haveri, Kalaburagi, Kodagu, Koppal, Mandya, Mysuru, Raichur, Shivamogga, Udupi, Uttara Kannada, Vijayapura, Yadgir
4	Kerala	Idukki, Malappuram, Wayanad, Kozhikode
5.	Maharashtra	Kolhapur, Sangli, Satara, Ratnagiri, Sindhudurg, Palghar, Nashik, Ahmednagar
6.	Odisha	Balangir, Sonepur, Kalahandi, Nuapada, Koraput, Malkangiri, Rayagada, Nawarangpur
7.	Uttarakhand	Uttarkashi and Chamoli

Tax period	Due date	Reference
Oct 2019	20th Nov 2019	Notification No. 44/2019 - Central Tax, dated 9-10-2019
Oct 2019	24th Mar 2020	Notification No. 25/2020 - Central Tax, dated 23-3-2020- For registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir
Nov 2019	23rd Dec 2019	Notification No. 44/2019 - Central Tax, dated 9-10-2019
Nov 2019	31st Dec 2019	Notification No. 77/2019 - Central Tax, dated 26-12-2019- For registered persons whose principal place of business is in the State of Assam, Manipur, Meghalaya, or Tripura.
Dec 2019	20th Dec 2019	Notification No. 44/2019 - Central Tax, dated 9-10-2019
Jan 2020	20th Feb 2020	Notification No. 44/2019 - Central Tax, dated 9-10-2019- For taxpayers having an aggregate turnover of more than Five Crore rupees in the previous financial year.
Feb 2020	20th Mar 2020	
Mar 2020	20th Apr 2020	
Jan 2020	22nd Feb 2020	Notification No. 7/2020-Central Tax- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-1 States.
Feb 2020	22nd Mar 2020	
Mar 2020	22nd Apr 2020	
Jan 2020	24th Feb 2020	Notification No. 7/2020-Central Tax- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-2 States.
Feb 2020	24th Mar 2020	
Mar 2020	24th Apr 2020	
Nov 2019 to Feb 2020	24th Mar 2020	Notification No. 42/2020 - Central Tax, dated 5-5-2020- For registered persons whose principal place of business is in the Union territory of Jammu and Kashmir
Nov 2019 to Dec 2019	24th Mar 2020	Notification No. 42/2020 - Central Tax, dated 5-5-2020- For registered persons whose principal place of business is in the Union territory of Ladakh.
Jan 2020 to Mar 2020	20th May 2020	Notification No. 42/2020 - Central Tax, dated 5-5-2020- For registered persons whose principal place of business is in the Union territory of Ladakh.
	20th May 2020	Notification no. 29/2020 - Central Tax, dated 23-3-2020- For taxpayers having an aggregate turnover of more than Five Crore rupees in the previous financial year.

Apr 2020	22nd May 2020	Notification No. 29/2020-Central Tax- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-1 States.
	24th May 2020	Notification No. 29/2020-Central Tax- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-2 States.
May 2020	27th Jun 2020	Notification no. 36/2020 - Central Tax, dated 3-4-2020- For taxpayers having an aggregate turnover of more than Five Crore rupees in the previous financial year.
	12th Jul 2020	Notification No. 36/2020-Central Tax- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-1 States.
	14th Jul 2020	Notification No. 36/2020-Central Tax- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-2 States.
Jun 2020 to Sep 2020		Notification no. 29/2020 - Central Tax, dated 23-3-2020- Due date is 20th of next month, for taxpayers having an aggregate turnover of more than Five Crore rupees in the previous financial year.
Jun 2020 to Sep 2020 (Except Aug 2020)		Notification no. 29/2020 - Central Tax, dated 23-3-2020- Due date is 22nd of next month- for taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-1 States.
Jun 2020 to Sep 2020 (Except Aug 2020)		Notification no. 29/2020 - Central Tax, dated 23-3-2020- Due date is 24th of next month- for taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-2 States.
Aug 2020	1st Oct 2020	Notification No. 54/2020 - Central Tax, dated- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal

		place of business is in Category-1 States.
	3rd Oct 2020	Notification No. 54/2020 - Central tax, dated- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-2 States.
	20th of next month	Notification no. 76/2020 - Central Tax, dated 15-10-2020- For taxpayers having an aggregate turnover of more than Five Crore rupees in the previous financial year.
Oct 2020 to Dec 2020	22nd of next month	Notification no. 76/2020 - Central Tax, dated 15-10-2020- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-1 States.
	24th of next month	Notification no. 76/2020 - Central Tax, dated 15-10-2020- For taxpayers having an aggregate turnover of up to rupees Five Crore in the previous financial year, whose principal place of business is in Category-2 States.
Notification no. 76/2020 - Central tax, dated 15-10-2020 rescinds by notification 86/2020 C.T. dated 10.11.2020		

Notification No. 82 /2020 – C.T. 10.11.2020 had provided for the due date for the registered person monthly/quarterly return (Form GSTR 3B) from Jan 2021:

S.No.	Particulars	Due Date
01.	Registered taxpayer's Aggregate Turnover in the Previous Financial year < Rs.5 Crores and opted for QRMP scheme:	
	Category 1 States	22nd of month succeeding such quarter
	Category 2 States	24th of month succeeding such quarter
02.	Other than Above:	20th of next month

Tax period	Due date	Reference
April 2021	26th May 2021	Notification no. 12/2021-Central Tax dated 01.05.2021
May 2021	26th June 2021	Notification no. 17/2021-Central Tax dated 01.06.2021

<table>
<tr><td>April 2022</td><td>24th May 2022</td><td>Notification no. 05/2022-Central Tax dated 17.05.2022</td></tr>
<tr><td>September 2022</td><td>21st October 2022</td><td>Notification no. 21/2022-Central Tax dated 21.10.2022</td></tr>
<tr><td>May, 2023</td><td>30th June, 2023</td><td>Notification No. 17/2023-Central Tax dated 27.06.2023: For the persons registered in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat.</td></tr>
<tr><td>Quarter Ending June, 2023</td><td>25th August, 2023</td><td>Notification No. 43/2023-Central Tax dated 25.08.2023: For registered persons whose principal place of business is in the State of Manipur.
Earlier the date was extended till 31st July 2023 vide Notification No. 20/2023-Central tax dated 17.07.2023.</td></tr>
<tr><td>Apr, May, June & July 2023</td><td>25th August, 2023</td><td>Notification No. 42/2023-Central Tax dated 25.08.2023: For registered persons whose principal place of business is in the State of Manipur.
Earlier the date was extended as follows:
<table>
<tr><td>April 2023</td><td>31st May 2023</td><td>Notification No. 12/2023-Central Tax dated 24.05.2023</td></tr>
<tr><td>April & May 2023</td><td>30th June 2023</td><td>Notification No. 15/2023-Central Tax dated 19.06.2023</td></tr>
<tr><td>April, May & June 2023</td><td>31st July 2023</td><td>Notification No. 19/2023-Central Tax dated 17.07.2023</td></tr>
</table></td></tr>
<tr><td>November, 2023</td><td>27th December, 2023</td><td>Notification No. 55/2023-Central Tax dated 20.12.2023: For registered persons whose principal place of business is in Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu</td></tr>
</table>

CATEGORY - 1

States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands, or Lakshadweep

CATEGORY - 2

States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

05. GSTR-4

Tax Period	Due Date	Remarks
Jul 17 to Sep 17	24-12-2017	Extended vide. Notification 59/2017 C.T. dt. 15.11.2017
Oct 17 to Dec 17	18-01-2018	No Extension
Jan 18 to Mar 18	18-04-2018	No Extension
Apr 18 to Jun 18	18-07-2018	No Extension
Jul 18 to Sep 18	30-11-2019	Extended vide. Notification 65/2018 C.T. dt. 29.11.2018
Oct 18 to Dec 18	18-01-2019	No Extension
Jan 19 to Mar 19	18-04-2019	No Extension
Apr 19 to Mar 20	31-10-2020	Extended vide. Notification 21/2019 C.T. dt. 23.04.2019 (As amended)
Apr 20 to Mar 21	31-07-2021	Extended vide. Notification 21/2019 C.T. dt. 23.04.2019 (As amended)
Apr 21 to Mar 22	30-04-2022	Extension only by waiver of Late Fees N.N. 07/2022 – C.T. dt 26.05.2022
Apr 22 - Mar 23	30-04-2023	No Extension

06. GST CMP-08

Tax Period	Due Date	Remarks
Apr 19 to Jun 19	31-08-2019	Extended vide. Notification 35/2019 dt. 29.07.2019
Jul 19 to Sep 19	22-10-2019	Extended vide. Notification 50/2019 dt. 24.10.2019
Oct 19 to Dec 19	18-01-2020	No Extension

Jan 20 to Mar 20	07-07-2020	Extended vide. Notification 34/2020 dt. 03.04.2020
Apr 20 to Jun 20	18-07-2020	No Extension
Jul 20 to Sep 20	18-10-2020	No Extension
Oct 20 to Dec 20	18-01-2021	No Extension
Jan 21 to Mar 21	18-04-2021	1st 15 days interest was wavered, Next 15 days interest @ 9%.
Apr 21 to Jun 21	18-07-2021	No Extension
Jul 21 to Sep 21	18-10-2021	No Extension
Oct 21 to Dec 21	18-01-2022	No Extension
Jan 22 to Mar 22	18-04-2022	No Extension
Apr 22 to Jun 22	31-07-2022	Extended vide. Notification 11/2022 dt. 05.07.2022
Jul 22 to Sep 22	18-10-2022	No Extension
Oct 22 to Dec 22	18-01-2023	No Extension
Jan 23 to Mar 23	18-04-2023	No Extension

07. GSTR-7

Tax Period	**Due Date**	**Remarks**
Oct 18 to July 19	31-08-2019	Notification 26/2019-CT dated 28.06.2019
July 19	20-09-2019	Notification 40/2019-CT dated 31.08.2019: For the registered persons whose principal place of business is in the district as mentioned below:

Sl. No.	***Name of State***	***Name of District***
(1)	*(2)*	*(3)*
1.	*Bihar*	*Araria, Kishanganj, Madhubani, East Champaran, Sitamarhi, Sheohar, Supaul, Darbhanga, Muzaffarpur, Saharsa, Katihar, Purnia, West Champaran.*
2	*Gujarat*	*Vadodara.*
3	*Karnataka*	*Bagalkot, Ballari, Belagavi, Chamarajanagar, Chikkamagalur, Dakshina Kannada, Davanagere, Dharwad, Gadag, Hassan, Haveri, Kalaburagi, Kodagu, Koppal, Mandya, Mysuru, Raichur, Shivamogga, Udupi, Uttara Kannada, Vijayapura, Yadgir.*

4	*Kerala*	*Idukki, Malappuram, Wayanad, Kozhikode.*
5	*Maharashtra*	*Kolhapur, Sangli, Satara, Ratnagiri, Sindhudurg, Palghar, Nashik, Ahmednagar.*
6.	*Odisha*	*Balangir, Sonepur, Kalahandi, Nuapada, Koraput, Malkangiri, Rayagada, Nawarangpur.*
7	*Uttarakhand*	*Uttarkashi and Chamoli:*

<table>
<tr><th>Tax Period</th><th>Due Date</th><th>Remarks</th></tr>
<tr><td>July 19 to Oct 19</td><td>24-03-2020</td><td>Notification No. 20/2020 - Central Tax, dated 23-3-2020: For the registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir.</td></tr>
<tr><td>Nov 19 to Feb 20</td><td>24-03-2020</td><td>Notification No. 20/2020 - Central Tax, dated 23-3-2020: For the registered persons whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh.</td></tr>
<tr><td>Nov 19</td><td>25-12-2019</td><td>Notification No. 78/2019 - Central Tax, dated 26-12-2019: For the registered persons whose principal place of business is in the State of Assam, Manipur or Tripura.</td></tr>
<tr><td>April 23 to July 23</td><td>25-08-2023</td><td>Notification No. 44/2023-Central Tax, dated 25-8-2023: For the registered persons whose principal place of business is in the State of Manipur.
<table>
<tr><td>April 2023</td><td>31st May 2023</td><td>Notification No. 13/2023-Central Tax dated 24.05.2023</td></tr>
<tr><td>April & May 2023</td><td>30th June 2023</td><td>Notification No. 16/2023-Central Tax dated 19.06.2023</td></tr>
<tr><td>April, May & June 2023</td><td>31st July 2023</td><td>Notification No. 21/2023-Central Tax dated 17.07.2023</td></tr>
</table>
</td></tr>
</table>

Chapter 11
Payment of Tax

Sections	Rules
49. Payment of tax, interest, penalty and other amounts	85. Electronic Liability Register
49A. Utilisation of input tax credit subject to certain conditions	86. Electronic Credit Ledger
49B. Order of utilisation of input tax credit	86A. Conditions of use of amount available in electronic credit ledger
50. Interest on delayed payment of tax	86B. Restrictions on use of amount available in electronic credit ledger
51. Tax deduction at source	87. Electronic Cash Ledger
52. Collection of tax at source	88. Identification number for each transaction
53. Transfer of input tax credit	88A. Order of utilization of input tax credit
53A. Transfer of certain amounts	88B. Manner of calculating interest on delayed payment of tax
	88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return
	88D. Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return

Statutory Provisions

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

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [1][section 41 [2][~~or section 43A~~], to be maintained in such manner as may be prescribed.

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

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

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions [3][and restrictions] within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of-

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax

[4][Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

[5][Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of

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

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

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

tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:

(a) self–assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under Section 73 or 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

[6]*[(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,-*

(a) integrated tax, central tax, State tax, Union territory tax or cess; or

(b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

***Provided** that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.]*

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).]

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

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

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

Explanation. — For the purposes of this section, —

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression, —

(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder

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

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

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

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

Extract of the CGST Rules, 2017

85. Electronic Liability Register

(1) The electronic liability register specified under sub-section (7) of section 49 shall be maintained in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.

(2) The electronic liability register of the person shall be debited by-

(a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;

(b) the amount of tax, interest, penalty or any other amount payable as determined

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

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

by a proper officer in pursuance of any proceedings under the Act or as ascertained by the [10][said person; or]

(c) [11][~~the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or~~]

(d) any amount of interest that may accrue from time to time.

(3) Subject to the provisions of section 49, [12][section 49A and section 49B,] payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.

(4) The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.

(5) Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.

(6) The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.

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

86. Electronic Credit Ledger

(1) The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.

(2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 [13][or section 49A or section or 49B].

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

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

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

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

(3) Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

(4) If the refund so filed is rejected, either fully or partly, the amount debited under sub rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.

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

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

(a) under sub-section (3) of section 54 of the Act, or

(b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,

along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.]

(5) Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.

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

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

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

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-

[14] Inserted vide Notf No. 16/2020-CT dt. 23.03.2020.
[15] Inserted vide Notf No. 14/2022-CT dated 05.07.2022.
[16] Inserted vide Notf No. 75/2019 - CT dt. 26.12.2019.

(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-

(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(ii) without receipt of goods or services or both; or

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

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

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.]

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

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

Provided that the said restriction shall not apply where -

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or

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

(b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or

(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is –

(i) Government Department; or

(ii) a Public Sector Undertaking; or

(iii) a local authority; or

(iv) a statutory body:

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

87. Electronic Cash Ledger

*(1) The electronic cash ledger under sub-section (1) of section 49 shall be maintained **FORM GST PMT-05** for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.*

*(2) Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount:*

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

[19][~~Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)~~

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

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

~~may also do so through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board.~~]

(3) The deposit under sub-rule (2) shall be made through any of the following modes namely:

(i) Internet Banking through authorised banks;

[20][(ia) Unified Payment Interface (UPI) from any bank;

(ib) Immediate Payment Services (IMPS) from any bank;]

(ii) Credit card or Debit card through the authorised bank;

(iii) National Electronic Fund Transfer or Real Time Gross Settlement from an bank; or

(iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:

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

(a) Government Departments or any other deposit to be made by persons as maybe notified by the Commissioner in this behalf;

(b) Proper officer or any other officer authorised to recover outstanding due from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

(c) Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:

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

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

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

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

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

(4) Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.

(5) Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement [23][or Immediate Payment Service] mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:

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

(6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

(7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in FORM GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.

[24][Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.]

(9) Any amount deducted under section 51 or collected under section 52 and claimed [25][~~in FORM GSTR-02~~] by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger [26][~~in accordance with the provisions of rule 87~~].

(10) Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

(11) If the refund so claimed is rejected, either fully or partly, the amount debited under

[23] Inserted vide Notf No.14/2022 - CT dated 05.07.2022.
[24] Inserted vide Notf No. 26/2022-CT dated 26.12.2022.
[25] Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.6.2019.
[26] Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019 w.e.f. 28.6.2019.

sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in FORM GST PMT-03.

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

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

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

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

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

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

88. Identification number for each transaction

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

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

(3) A unique identification number shall be generated at the common portal for each credit in the electronic liability register for reasons other than those covered under sub-rule (2).

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

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the

[27] Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019 w.e.f. 21.04.2020 vide Nott No. 37/2020 – CT dt. 28.04.2020.
[28] Inserted vide Notf No.14/2022 - CT dt. 05.07.2022.
[29] Inserted vide Notf No. 16/2019-CT dt. 29.03.2019.

payment of central tax and State tax or Union territory tax, as the case may be, in any order:

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

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

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

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

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

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

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

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

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

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

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

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

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

within a period of seven days.

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

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B*, fully or partially, along with interest under* section 50*, through* FORM GST DRC-03 *and furnish the details thereof in Part B of* FORM GST DRC-01B *electronically on the common portal; or*

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B,

within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.]

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

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

(1) Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC- 01C, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a) pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or

(b) explain the reasons for the aforesaid difference in input tax credit on the common portal, within a period of seven days.

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

(a) pay an amount equal to the excess input tax credit, as specified in Part A of FORM GST DRC- 01C, fully or partially, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01C, electronically on the common portal, or

(b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-01C, within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.]

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

Related provisions of the Statute

Section or Rule	Description
Section 2(43)	Definition of 'Electronic Cash Ledger'
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 2(62)	Definition of 'Input Tax'
Section 2(82)	Definition of 'Output Tax'
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 2(117)	Definition of 'Valid Return'
Section 9	Levy and Collection
Section 10 (IGST)	Place of supply of goods other than supply of goods imported into, or exported from India
Section 11 (IGST)	Place of supply of goods imported into, or exported from India
Section 12 (IGST)	Place of supply of services where location of supplier and recipient is in India
Section 13 (IGST)	Place of supply of services where location of supplier or location of recipient is outside India
Section 16	Eligibility and Conditions for taking Input Tax Credit
Section 17	Apportionment of Credit and Blocked Credits
Section 39	Furnishing of Returns
Section 41	Availment of input tax credit
Section 50	Interest on Delayed Payment of Tax
Section 51	Tax deduction at source
Section 54	Refund of tax
Section 77	Tax wrongfully collected and paid to Central or State Government
Section 19 (IGST)	Tax wrongfully collected and paid to Central or State Government

49.1 Introduction

This section provides for the following:

1. Methodology or mode of payment of tax, interest, penalty, fee or any other amount by a person,

2. This section prescribes maintenance of three kinds of ledgers in respect of the taxable person.
   (a) Electronic Cash Ledger;
   (b) Electronic Input Tax Credit Ledger or Electronic Credit Ledger;
   (c) Electronic Tax Liability Register.
3. The section further provides for the availability of credit in the cash ledger or the credit ledger depending on the payment made by the taxable person or filling of return.
4. It provides for utilization of credit and prescribes the method of cross utilization of credit amongst IGST and CGST, IGST and SGST or UTGST.
5. Transfer of input tax credit from CGST to IGST account when CGST is utilized for payment of IGST; similar provisions are enacted in SGST Act and UTGST Act as well.
6. Restrict ITC claim on finding of defect prescribed.
7. Restrict utilisation of ITC in certain transactions.
8. Permit transfer of any cash lying in Electronic Cash Ledger from one major/minor head to another major/minor head within the GSTIN Permit transfer of any cash lying in Electronic Cash Ledger to the Electronic Cash Ledger of another unit of distinct persons (different GSTIN).
9. Permit transfer of any cash lying in Electronic Cash Ledger among distinct persons.

Sections 49A and 49B

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

49.2 Analysis

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

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

1. Deposit of tax, interest, penalty, fee or any other amount by a person can be made by the following modes: -
   - Internet Banking through authorised banks;
   - Unified Payment Interface (UPI) from any bank *;

- Immediate Payment Services (IMPS) from any bank *;
- Credit /Debit cards*;
- National Electronic Fund Transfer (NEFT)
- Real Time Gross Settlement (RTGS)
- Over the Counter payment (OTC) through authorized banks for deposits up to ₹ 10,000/- per challan per tax period, by cash, cheque or demand draft. This amount restriction is not applicable to remittances by:
  - Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;
  - Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties. Proper Officer or any other Officer recovering outstanding dues or during any investigation or enforcement activity or ad hoc deposit.
- International money transfer through Society for Worldwide Interbank Financial Telecommunication payment network for person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient.
- Any other mode as may be prescribed.

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

2. The 'deposit' made by one of the above-mentioned modes will be credited to the Electronic Cash Ledger of the taxable person. This ledger shall be maintained in **FORM GST PMT-05**.

3. Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.

4. The challan in **FORM GST PMT-06** generated on the common portal shall be valid for a period of 15 days.

5. A person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 or a person supplying online money gaming from a place outside India to person in India as referred to in section 14A of IGST Act, 2017 may also make the deposit in electronic cash ledger through international money transfer through Society for Worldwide

Interbank Financial Telecommunication payment network from the date to be notified by the Board.

6. Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number (TIN) generated through the common portal.

7. Date of credit into the account of the Government is deemed to be the date of deposit in the electronic cash ledger (not the actual date of debit to the account of the taxable person).

8. On successful credit of the amount to the concerned Government account maintained in the authorised bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan.

9. Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no CIN is generated or generated but not communicated to the common portal, the said person may represent electronically in **FORM GST PMT-07** through the common portal to the bank or electronic gateway through which the deposit was initiated. However, PMT 07 shall not be used in the following situations:

   a. Before 24 hours of debit of amount from the bank account.

   b. If payment status is PAID and amount is updated in Cash Ledger.

   c. In case of E-payment, payment not initiated from the GST Portal.

   d. In case of OTC Payment, status is AWAITING BANK CLEARANCE and cheque/ Demand Draft is not realized.

   e. If Memorandum of error (MoE) is raised against the CIN.

10. Where the bank fails to communicate the details of Challan Identification number (CIN) to the Common Portal, The Electronic Cash ledger may be updated on the basis of e-scroll of the RBI in cases where the details of the e-scroll are in conformity with the details in the challan generated in Form GST PMT 06 on the Common Portal.

11. Electronic Cash Ledger has 4 major heads of taxes and 5 minor heads for payment, which is as follows:

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

12. Any payment made towards respective major heads shall only be utilized for offset of liability of that head of account. For example, if IGST is paid through a Challan, then this cash balance against IGST in the cash ledger shall only be utilized for payment of IGST.

13. Likewise, the amount paid in the minor head may be used for making any payment towards the liability of such minor head, say, tax, interest, penalty, fees or any other amount payable as per the provisions of the Act or Rules.

14. Any amount deducted under section 51 (TDS by Central / State Government or Local Authority or Government Agencies) or collected under section 52 (TCS by E-Commerce Operator) and claimed by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger.

15. Under the powers vested by sub-section (10) of section 49 read with sub-rule (13) of rule 87, any balance in the electronic cash ledger available under any head can be transferred to any other head within cash ledger. This transfer may be done using **FORM GST PMT-09**, provided that there is no unpaid liability in the Electronic Liability Register. For example, cash balance under minor head Interest under CGST may be transferred to any of the minor head under CGST or SGST or IGST as desired by the registered person.

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

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

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

17. **CONTENT OF THE LEDGER**:

DR. **Electronic Cash Ledger (FORM GST PMT - 05)** CR	
(a) The payment of tax, interest, penalty, fee or any other amount	(a) Deposit, of tax, interest, penalty, fee or any other amount, though a challan in **FORM GST PMT-06**
(b) Refund of any amount from the electronic cash ledger in **FORM GST RFD 01**	(b) Amount deducted under section 51
	(c) Amount collected under section 52
	(d) Refund claim rejected and re-credit through **FORM GST PMT 03**

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

1. Sub-section (2) of section 49 of the CGST Act provides that the self-assessed input tax credit as per return filed by a taxable person shall be credited to its Electronic Credit Ledger.

2. This ledger shall be maintained in **FORM GST PMT-02** for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said Ledger.

3. The Electronic credit ledger may include the following:

   — Transitional credit of Excise and Service tax as CGST Credit and State VAT credit as SGST Credit.

   — ITC on inward supplies (including eligible capital goods) from registered tax payers.

   — ITC available based on distribution from ISD.

   — ITC on input of stock held/ semi-finished goods or finished goods held in stock on the day immediately preceding the date from which the taxpayer became liable to pay tax provided he applies for registration within 30 days from the date of his liability.

   — Permissible ITC on inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day of conversion from composition scheme to regular tax scheme.

   — ITC eligible on payment made on reverse charge basis

   The above list is illustrative and not exhaustive viz., credit transfers to a recipient in cases of mergers, amalgamations etc.

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

5. Any excess payment or wrong payment of tax has been made by debit to the electronic credit ledger. Post which, refund has been sought by the registered person, then if such refund is found admissible, it shall only be re-credited to the electronic credit ledger by an order in **FORM GST PMT-03.**

6. Any erroneous refund sanctioned is deposited by the registered person under sub-section (3) of section 54 of the Act, or under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96, along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out. An amount equivalent to the amount of erroneous refund deposited by the

registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

7. Blocking of utilization of credit can be done under Rule 86A by Commissioner or authorized officer not below the rank of Assistant Commissioner, if they have reason to believe that the credit has been availed fraudulently or is ineligible. This blocked amount shall not be available for discharge of liability or for claiming refund of any unutilized amount. This blocking may be done after giving reasons in writing. Such restriction shall be removed by the officer on being satisfied that conditions disallowing credit no longer exists or one year has elapsed from such restriction, whichever is earlier.

8. **CONTENT OF THE LEDGER**:

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

9. **MANNER OF UTILISATION OF ITC AND CROSS UTILIZATION**

(1) The amount available in the electronic credit ledger may be utilized for effecting payment towards output tax payable under the Act or Rules. The manner of utilization, conditions and timelines is specifically prescribed.

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

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

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

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

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

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

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

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

(4) With effect from 1.02.2019, provisos to sub-clause (c) and (d) of sub-section 5 of section 49 inserted vide the *CGST (Amendment) Act, 2018* read with *Notification No. 2/2019-C.T., dated 29-1-2019*], ITC on account of SGST/ UTGST shall be utilized towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST.

(5) Cross-utilization of credit is available means it can be effected only **in that order**. The important restriction is that the CGST credit cannot be utilized for payment of SGST or UTGST and *vice versa.* One may note the fact that IGST credit is available seamlessly, subject to order of utilization as mentioned *supra*.

(6) Following illustration on order of utilization of input tax credit amplifying the impact of newly inserted rule 88A of the CGST Rules as stipulated in *Circular No. 98/17/2019-GST, dated 23.04.2019* is as under:

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

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

Option 1:

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

Option 2:

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

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

(a) Reduction of transactions of inter -settlement between the Centre & States

(b) Self-utilization of IGST deposited in Consolidated Fund of India through payment route of taxpayer instead of post return calculation

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

Illustration:

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

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

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

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

(9) A unique identification number shall be generated at the common portal for each debit or credit to the electronic cash or credit ledger, as the case may be. The said UIN must be used to discharge tax liability.

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

- The Commissioner or an officer authorized by him (not below the rank of an

Assistant Commissioner) under rule 86A may, not allow the registered person to utilize ITC for payment of taxes or claim refund, if he has a reason to believe that such ITC in electronic credit ledger has been fraudulently availed or is ineligible. This blocking may be done after giving reasons in writing.

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

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

  - In order to curb misuse of ITC by the registered person the Central Government with effect from 01.01.2021 introduced rule 86B; which limits the use of ITC available in the electronic credit ledger for discharging the output tax liability. Accordingly, the registered persons cannot use ITC in excess of 99% of output tax liability.
  - This rule is applicable to registered persons having taxable value of supply (other than exempt supply and zero-rated supply) in a month more than ₹ 50 lakhs.
  - This rule has a non-obstante clause which means this rule overrides all CGST rules.
  - However, the above restriction is not applicable to the following registered persons:
    - If the persons mentioned below have paid more than ₹ 1 lakh as Income Tax under Income Tax Act, 1961 in each of the last two

financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired:

- The registered person
- Proprietor, Karta or Managing Director of the registered person
- Any of two partners or whole-time directors or members of managing committee of Associations or Board of Trustees as the case may be.

- If the registered person under concern has received a refund of unutilized input tax credit amounting to more than ₹ 1 lakh in the preceding financial year on account of export under LUT or due to inverted tax structure.
- If the registered person under concern has discharged his liability towards output tax by electronic cash ledger for an amount in excess of 1% cumulatively of the total output tax liability up to the said month in the current financial year.
- If the registered person under concern is any of the following:
  - Government department, or
  - a Public sector undertaking, or
  - a Local authority, or
  - a Statutory Body.

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

COMMON POINTS FOR ELECTRONIC CASH & CREDIT LEDGER

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

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

1. A **Tax Liability Register** is required to be maintained electronically for all liabilities of a taxable person in **FORM GST PMT-01**. This ledger is auto updated in common portal based on the data received by it from returns filed by the registered person or demand raised by the officer.

2. This ledger shall be debited by the following amounts (liability is created by debiting)

   — the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said taxable person;

   — the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said taxable person;

   — any amount of interest that may accrue from time to time

   — where **FORM DRC-03** is being generated for intimation of payment made voluntarily or made against Show Cause Notice, specifying cause of payment

      o Voluntary

      o SCN or

      o Others

   — On generation of **FORM DRC-03** payment reference number will be generated and found in Part - II of Electronic Liability Register.

3. This ledger shall be credited for the following payments (liability is discharged by crediting Electronic Liability Register and debiting Electronic Cash Ledger)

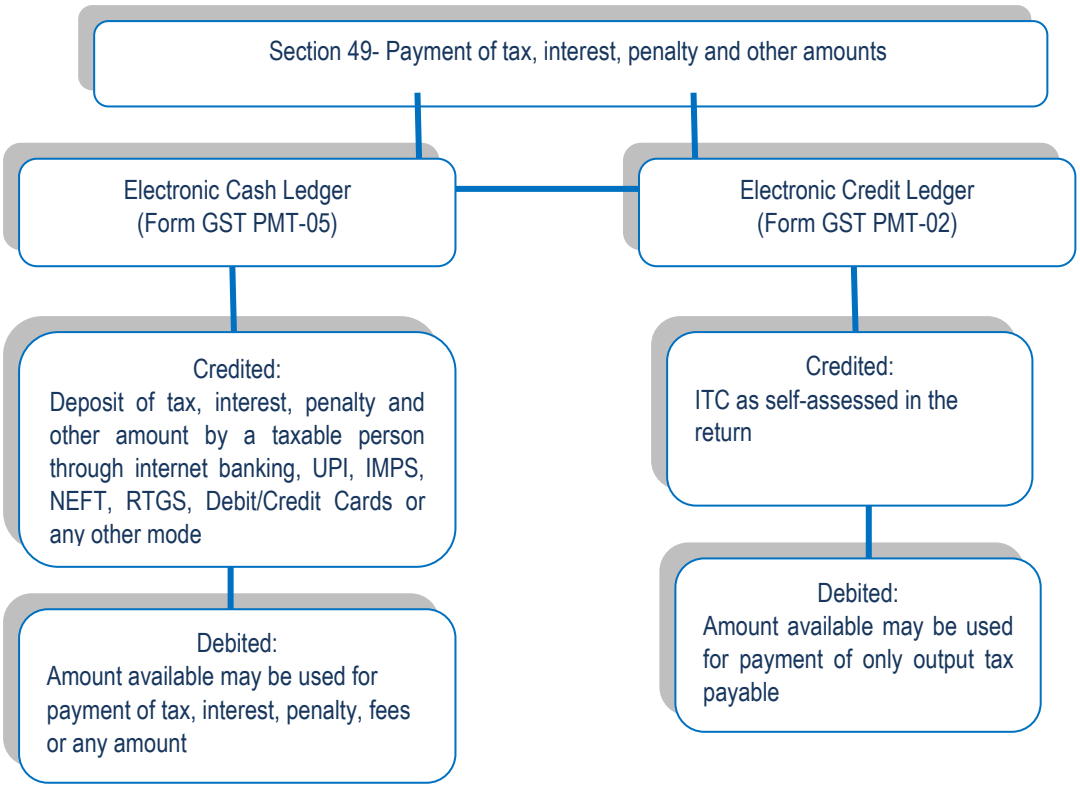
   — Tax Deducted at Source under section 51

   — Tax Collected at Source under section 52

   — Reverse Charge on supply of goods or services under sub- section 3 of section 9 of CGST /SGST Act, sub-section 3 of section 5 of IGST Act and sub section 3 of section 7 of UTGST Act

   — Tax on specified supplies from unregistered suppliers under sub section 4 of section 9 of CGST/SGST Act, sub section 4 of section 5 of IGST Act and sub section 4 of section 7 of UTGST Act.

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



4. **Order of discharge of tax**

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

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

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

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

Where tax payable by the registered person for a particular tax period in GSTR-1/IFF exceeds

the amount of tax payable reported in GSTR-3B return by such amount and such percentage, as may be recommended by the council, said person shall be intimated of such difference in Part A of Form GST DRC-01B to direct that person either -

a) to pay such amount along with interest under section 50 through Form GST DRC-03; or

b) furnish an explanation related to the aforesaid difference,

within a period of 7 days.

The registered person upon receipt of such intimation either -

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

b) furnishes an explanation for the differential tax liability that has remain unpaid in Part B of Form DRC-01B

within a period of 7 days.

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

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

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

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

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

i. pay an amount equal to the excess ITC availed in FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or

ii. explain reasons for the aforesaid difference in ITC on the common portal

within a period of 7 days.

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

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

49.5 Issues and Concerns:

(i) Recipient of notified goods or services who is liable to reverse charge, is required to ensure that tax is not charged on the tax invoice issued by the supplier (marked as payable under RCM) of notified goods or services and all necessary declarations as required under the tax invoice and input tax credit provisions are complied with.

(ii) A person having multiple registrations is required to ensure that payment of tax is made for the registrations against which the tax liability is due. Any incorrect payment will envisage the correct payment of taxes under the appropriate registration, while such person needs to seek refund from that particular registration under which the said wrong payment is effected. This will impact working capital and obtaining refunds will envisage time and costs.

49.6 FAQs

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

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

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

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

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

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

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

Ans

Major heads	**Minor Heads**
IGST	Tax
CGST	Interest
SGST	Penalty
UTGST	Any other amount
CESS	Fees

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

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

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

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

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

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

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

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

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

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

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

49.7 MCQs

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

(a) Electronic Credit Ledger

(b) Tax Liability Register

(c) Electronic Cash Ledger

(d) None of the above

Ans. (c) Electronic Cash Ledger.

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

(a) Electronic Credit Ledger

(b) Tax Liability Register

(c) Electronic Cash Ledger

(d) None of the above

Ans. (a) Electronic Credit Ledger.

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

(a) CGST then SGST/UTGST

(b) SGST/UTGST then CGST

(c) CGST, UTGST/SGST in any order

(d) None of the Above

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

Q4. Which of the following statements is true?

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

(b) ITC of SGST is first utilized for payment of SGST and the balance is utilized for payment of CGST

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

(d) None of the Above

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

Statutory provisions

50. Interest on delayed payment of tax

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

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

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

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

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

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of

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

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

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

section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

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

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

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

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

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

Related provisions of the Statute

Section or Rule	Description
Section 2(62)	Definition of 'Input Tax'
Section 2(82)	Definition of 'Output Tax'
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 2(117)	Definition of 'Valid Return'
Section 9	Levy and Collection
Section 16	Eligibility and conditions for taking Input Tax Credit

Section 17	Apportionment of Credit and Blocked Credits
Section 39	Furnishing of Returns
Section 77	Tax Wrongfully Collected and Paid to Central or State Government
Section 19 (IGST)	Tax Wrongfully Collected and Paid to Central or State Government

50.1 Introduction

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

50.2 Analysis

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

Interest - When Payable

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

1. Sub-section (1): Failure to pay tax or any part thereof within the prescribed time
2. Sub-section (3): Wrong availment and utilization of input tax credit

Rate of Interest

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

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

Manner of Computation of Interest

1. Rule 88B inserted vide *Notification No. 14/2022-CT dated 05.07.2022*, applicable retrospectively with effect from 1st July 2017 prescribes the manner of computation of interest payable under sub-section (1) and (3) of section 50. Interest u/s 50(1) shall be calculated from the due date of payment of tax till the date of payment and interest u/s 50(3) shall be calculated from the date of utilization of such wrongly availed ITC till the date of reversal of such ITC or payment of such tax.

2. Pursuant to section 49, registered person can make payment of tax through electronic cash ledger or electronic credit ledger. Generally, balance in electronic credit ledger is exhausted first then electronic cash ledger is utilized for better working capital.

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

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

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

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

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

   Clarification

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

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

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

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

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

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

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

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

ILLUSTRATION – 1:

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

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

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

→ **Apr**

Let us find out the cash-payout:

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

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

→ **May**

Let us find out the cash-payout:

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

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

IGST = ₹ 5,000.00 X 10 /365 X 18/100 = ₹ 24.66

→ **June**

Let us find out the cash-payout:

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

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

CGST = 15,000 X 10 /365 X 18/100 = ₹ 74.00

SGST = 15,000 X 10 /365 X 18/100 = ₹ 74.00

ILLUSTRATION – 2:

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

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

3. Sections 73(5) & 73(6) provides that if the tax along with interest has been paid, the adjudicating authority shall not serve any show cause notice.

4. Section 73(8) provides that where a person has been served with show cause notice but has made the payment of tax and interest under section 50 within thirty (30) days of issue of notice, no penalty is payable and all proceedings in respect of that tax amount are deemed to be concluded.

5. On a conjoint reading of sections 50 (1), 73 (5), 73 (6) and 73 (8) of the Act, it is evident that where a person makes a voluntary payment of interest along with belated payment of tax whether admitted on his own or within thirty days from the date of issue of show cause notice, then the proceedings are deemed to be concluded and no penalty shall be payable.

Other Important Points to Note

1. The term 'tax' here means the tax payable under the Act or Rules made thereunder.

2. The phrase 'on his own' used in sub-section (1) of section 50 indicates that such payment of interest should be made voluntarily (i.e.) even without a demand.

3. The interest payable under this section shall be debited to the Electronic Liability Register as per sub-rule 1 of rule 85.

4. Such liability for interest can be settled by adjustment with balance in Electronic Cash Ledger but not with balance in Electronic Credit Ledger.

50.3 Issues and Concerns:

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

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

50.4 FAQs

Q1. When is a person liable to pay interest?

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

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

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

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

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

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

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

50.5 MCQs

Q1. Interest is payable on: -

(a) Belated payment of tax

(b) Wrong availment of input tax credit

(c) Wrong availment and utilization of input tax credit

(d) Both (a) and (c)

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

Q2. Interest on tax due is calculated: -

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

(b) Last day such tax was due to be paid

(c) No periods specified

(d) None of the above

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

Statutory provisions

51. Tax Deduction at Source

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate, —

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

(hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

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

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

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(3) [36][A certificate of tax deduction at source shall be issued in such form and in such

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

manner as may be prescribed.]

(4) *[37][If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five-day period until the failure is rectified, subject to a maximum amount of five thousand rupees].*

(5) *The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.*

(6) *If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.*

(7) *The determination of the amount in default under this section shall be made in the manner specified in section 73 or section74.*

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

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

Extract of the CGST Rules, 2017

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

(1) *Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in FORM GSTR-7 electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.*

(2) *The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the [38][deductees] [39][~~suppliers in **Part C** of **FORM GSTR-2A**~~*

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

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

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

*~~and~~ **~~FORM-GSTR-4A~~**] on the common portal after [40][~~the due date of~~] filing of **FORM GSTR-7** [41][for claiming the amount of tax deducted in his electronic cash ledger after validation].*

*(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in **FORM GSTR-7A** on the basis of the return furnished under sub-rule (1).*

87. Electronic Cash Ledger

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

Related provisions of the Statute

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

51.1 Introduction

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

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

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

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

(a) an authority or a board or any other body, -

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

(ii) established by any Government,

with fifty-one percent or more participation by way of equity or control, to carry out any function;

(b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;

(c) public sector undertakings:

Reference may be had to *CBIC Circular No. 76/50/2018-GST, dated 31.12.2018* which makes it clear that the 51% condition is applicable to both limbs of 'authority or board' appearing in notification issued under section 51(1)(d) [under para (a) above].

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

51.2 Analysis

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

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

1. The above 'persons' are referred to as deductors.

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

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

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

3. TDS applies on 'taxable goods or services' supplied and not on 'all taxable supplies'. Please note that 'taxable supplies' is defined in section 2(108) of CGST Act which covers all supplies that are 'leviable' to tax (even if exempt by notification under section 11 of the CGST Act). But, 'taxable goods and services' requires inquiry into whether the goods or services are taxable or exempt. If they are exempt, then TDS will not apply.

4. The amount deducted shall be paid to the Central Government within 10 days after the end of the month in which such deduction is made.

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

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

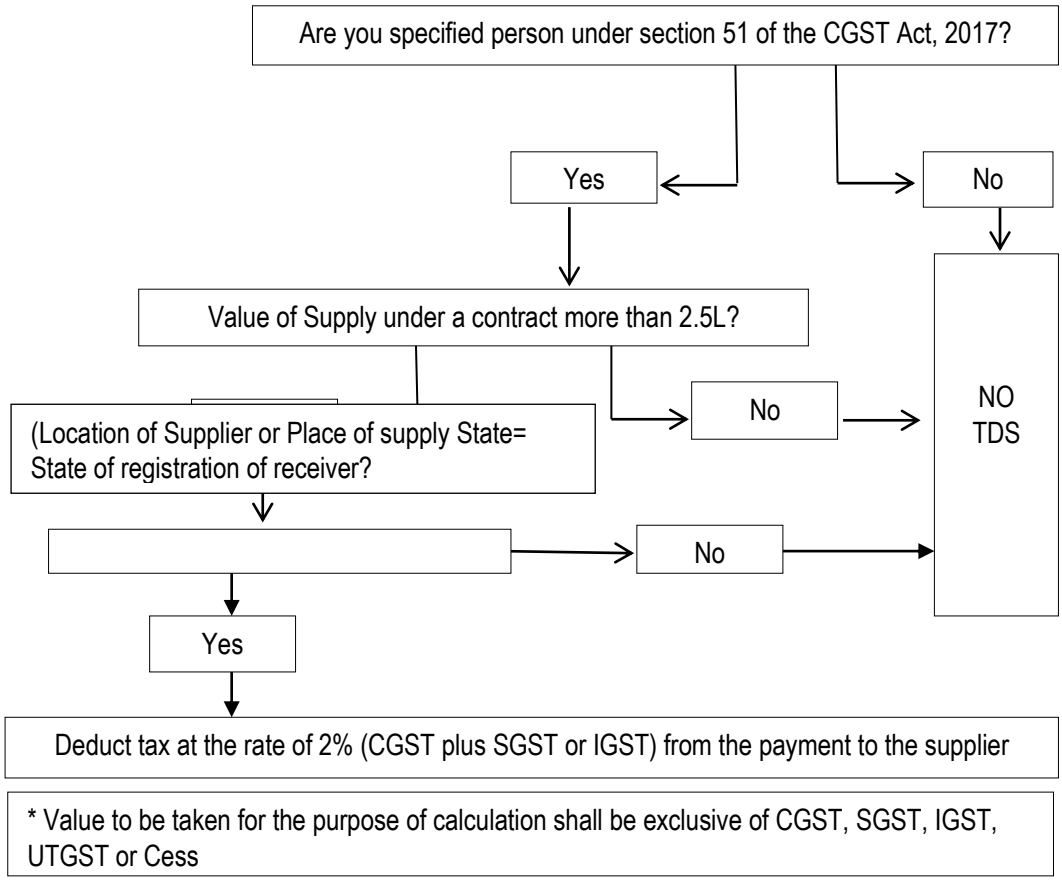
7. Non-remittance by the deductor: If the deductor does not remit the amount deducted as TDS, he is liable to pay penal interest under section 50 in addition to the amount of tax deducted.

8. The amount of tax deducted and reported in the return in **FORM GSTR-7** by the deductor shall reflect in Electronic Cash Ledger of deductee once it is claimed as credit to the Electronic Cash Ledger by the deductee.

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

9. Refund on excess collection: The deductor or the deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 54 relating to refunds would apply in such cases. However, if the amount deducted has been credited to the

Electronic Cash Ledger of the deductee, the deductor cannot claim refund (only deductee can claim).



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

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

12. IMPORTANT NOTIFICATIONS:

- *Notification No. 50/2018-CT dated 13.9.2018* (as amended) – TDS provision do not apply:
    - Authorities under the Ministry of Defence, other than the authorities specified in the Annexure-A and their offices (*Notification No. 57/2018 C.T. dated 23.10.2018*) w.e.f. 01.10.2018.
    - When supply is between PSU (Public Sector Undertaking) to another PSU (*Notification No 61/2018 C.T. dated 05.11.2018)* w.e.f. 01.10.2018.

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

51.3 FAQs

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

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

(a) A Department or establishment of the Central or State Government- In this regard, *Notification No. 57/2018-C.T., dated 23-10-2018* enlist the authorities of Ministry of Defence to which TDS is applicable.

(b) Local authority,

(c) Governmental agencies,

(d) an authority or a board or any other body -

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

(ii) established by any Government,

with 51 % or more participation by way of equity or control, to carry out any function;

(e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860.

(f) Public sector undertakings:

(g) Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council.

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

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

Q3. What is the rate of TDS?

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

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

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

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

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

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

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

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

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

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

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

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

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

Ans. No. TDS is not liable to be deducted on supply of goods &/or services place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of Section 51 of the CGST Act. In other words, provisions of TDS will not apply to supply of goods or services or both which takes place between one person to another person under department or establishment of Central or State Government or local authority or Government Agencies or such persons or category of persons notified by GST Council, with effect from 31.12.2018 as per the [*Notification No. 73/2018-C.T., dated 31.12.2018*].

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

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

51.6 MCQs

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

(a) 2%

(b) 3%

(c) 1%

(d) None of the above.

Ans. (c) 1%

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

(a) 20 days

(b) 10 days

(c) 15 days

(d) 5 days

Ans. (b) 10 days

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

(a) Electronic Credit Ledger

(b) Tax liability Ledger

(c) Electronic Cash Ledger

(d) None of the above.

Ans. (c) Electronic Cash Ledger

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

(a) Deductor

(b) Deductee

(c) Both Deductor and Deductee

(d) None of the above

Ans. (b) Deductee

Q5. Tax deduction shall be made if -

(a) A contract is for an amount exceeds ₹ 25 lakh

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

(c) A recipient receives goods or services or both exceeding ₹ 2.5 lakh in a year from various contractors

(d) None of the above

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

Statutory provisions

52. Collection of tax at Source

(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

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

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

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

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

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

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

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

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

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

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

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

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

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

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

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

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

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under [49][section 37 or section 39], the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

[50][(15) The operator shall not be allowed to furnish a statement under sub-section (4)

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

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

after the expiry of a period of three years from the due date of furnishing the said statement:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement.]

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

Extract of Relevant CGST Rules

60. Form and manner of ascertaining details of inward supplies

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

……..

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

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

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

*(2) [51][The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers] [52][~~in **Part C** of **FORM GSTR-2A**~~] on the*

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

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

*common portal after [53][~~the due date of~~] filing of **FORM GSTR-8** [54][for claiming the amount of tax collected in his electronic cash ledger after validation].*

80. Annual return

*(1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in **FORM GSTR-9** on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:*

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

***FORM GSTR-9A**.*

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

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

(3) …….

Related provisions of the Statute

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

[53] Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.06.2019, before it was read as "the due date of".
[54] Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.06.2019.
[55] Inserted vide Notf No. 40/2021-CT dated 29.12.2021.

52.1 Introduction

This section provides for collection of tax at source (TCS) in certain circumstances. The section specifically lists out the tax collecting persons who are mandated by the Central Government to collect tax at source, the rate of tax collection and the procedure for remittance of the tax collected. The amount of tax collected is reflected in the Electronic Cash Ledger of the person from whom tax collected.

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

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

52.2 Analysis

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

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

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

It is pertinent to note the following definitions here –

Section 2 (44), –

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

Section 2 (45), –

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

From the above definitions, it can be inferred that **TCS refers to the tax collected by e-commerce operator when supplier supplies** taxable goods or services or both **through its portal and payment** for that supply is **collected by the e-commerce operator**.

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

(ii) The power to collect TDS by E-commerce operator shall be without prejudice to any other mode of recovery.

(iii) The amount so collected shall be paid to the Central/State Government respectively within 10 days after the end of the month in which such collection is made.

(iv) Statements to be submitted by E-Commerce operator: E-Commerce operator shall furnish a monthly statement containing details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it in section 52(1), in **FORM GSTR-8** within the 10 days after end of the month in which supplies are made.

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

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

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

(v) The amount of tax collected is reflected in Electronic Cash Ledger of supplier since related monthly return is filed by E-Commerce Operator.

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

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

(vii) Any authority, in the rank of Deputy Commissioner or above it can issue a notice – during, or before a proceeding under this Act - to E-Commerce Operator seeking information
on –

A. supplies of goods or services or both effected through such operator during any period; or

B. stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

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

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

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

1. such persons shall not make any inter-state supply of goods;
2. such person shall not make supply of goods through ECO in more than one State or Union Territory;
3. such persons shall be required to have PAN under Income Tax Act, 1947and will have to declare the same on the portal along with the address of the place of business and the State or Union territory in which he seeks to make such supply, which shall be subject to validation on the common portal;
4. on successful validation of the details furnished, such person will be granted an enrolment number on the portal. Such persons shall not be granted more than one enrolment number in a State or Union Territory;
5. no supplies shall be made by the persons through ECO unless he has obtained the enrolment number.
6. Where such persons are subsequently granted registration under section 25 of the CGST Act, the enrolment number shall cease to be valid from the effective date of registration.

(ix) Special procedure has been notified through *Notification No. 36/2023 dated 04.08.2023*, w.e.f. 01.10.2023 to be followed by the ECO required to collect tax at source u/s 52 in respect of goods supplied through by a composition taxpayer as follows:

1. It shall not allow any inter-State supply of goods made through it by the said persons;
2. It shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said persons and pay to the Government asper provisions of 52(3);
3. It shall furnish the details of supplies of supplies of goods made through it by the said persons in Form GSTR-8 electronically on the common portal.

(x) Special procedure has been notified through *Notification No. 37/2023 dated 04.08.2023, w.e.f. 01.10.2023* to be followed by the ECO. who is required to collect tax at source u/s 52 of CGST Act, 2017 in respect of supplies of goods through them by unregistered persons, as follows:

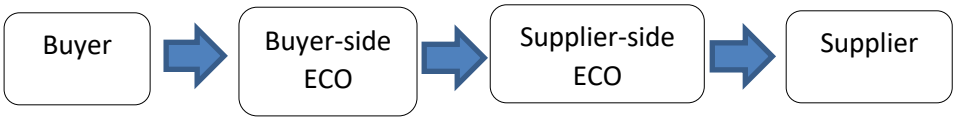
1. The electronic commerce operator shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;
2. It shall not allow any inter-State supply of goods made through it by the said person;
3. It shall not collect tax at source under section 52(1) in respect of supply of goods made through it by the said person; and
4. It shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

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

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

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

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

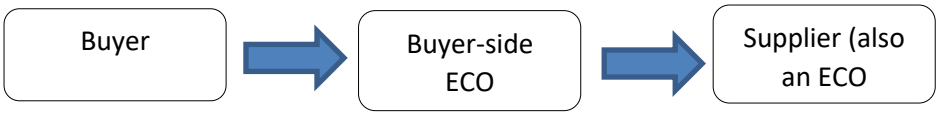


Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection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

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

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

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



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

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

(xii) PENALTY:

A. In case, the E-commerce operator -

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

then pursuant to section 122(1)(vi) of the CGST Act, such e-commerce operator shall be liable to pay a penalty of ₹ 10,000 or an amount equivalent to the tax not collected or short collected or collected but not paid to the Government whichever is higher.

B. In terms of section 52(13), where notice served under section 52(12) by an authority not below the rank of Deputy Commissioner is not responded within 15 days from the date of receipt by the E Commerce Operator, will attract under Section 52 (14) of the Act which may extend to ₹. 25,000.

C. A new sub-section (1B) has been introduced in section 122 by *The Finance Act, 2023*, applicable w.e.f. 01.10.2023. This sub-section imposes a penalty of ₹ 10,000 in case of non-compliance of specified provisions.

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

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

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

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

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

52.3 FAQs

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

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

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

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

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

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

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

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

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

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

52.4 MCQs

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

(a) 1%

(b) 2%

(c) 0.5%

(d) A percentage not exceeding 1%.

Ans. (c) 0.5%

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

(a) 5 days

(b) 10 days

(c) 15 days

(d) 20 days

Ans. (b) 10 days

Q3. E Commerce operators should file:

(a) Monthly returns only

(b) Annual return only

(c) Quarterly return only

(d) Monthly Returns as well as Annual Return

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

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

(a) Superintendent

(b) Inspector

(c) Assistant Commissioner

(d) Deputy Commissioner

Ans. (d) Deputy Commissioner

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

(a) Shall not be there

(b) Penalty under section 52 shall be there

(c) Penalty under section 122 may be there

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

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

Statutory provisions

53. Transfer of input tax credit

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

Related provisions of the Statute

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

53.1 Introduction

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

53.2 Analysis

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

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

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

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

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

53.3 FAQ

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

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

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

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

53.4 MCQ

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

(a) CGST A/c

(b) SGST A/c

(c) UTGST A/c

(d) IGST A/c

Ans. (d) IGST A/c

Statutory Provisions

[56][53A. Transfer of certain amounts

Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act, the Government shall, transfer to the State tax

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

account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.]

Section 17A of the IGST Act, 2017

[57][17A. Transfer of certain amounts

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

53A.1 Analysis

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

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

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

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

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

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

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

Chapter 12
Refunds

Sections	Rules
54. Refund of tax	89. Application for refund of tax, interest, penalty, fees or any other amount
55. Refund in certain cases	90. Acknowledgement
56. Interest on delayed refunds	91. Grant of provisional refund
57. Consumer Welfare Fund	92. Order sanctioning refund
58. Utilisation of Fund	93. Credit of the amount of rejected refund claim
	94. Order sanctioning interest on delayed refunds
	95. Refund of tax to certain persons
	95A. [1][*Omitted*]
	96. Refund of integrated tax paid on goods or services exported out of India
	96A. Export of goods or services under bond or Letter of Undertaking
	96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realized
	96C. Bank Account for credit of refund
	97. Consumer Welfare Fund
	97A. Manual filing and processing

[1] *Omitted vide Notf No. 14/2022 - CT dated 05.07.2022, w.e.f. 01.07.2019.*

Statutory provisions

54. 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 before the expiry of two years from relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in [2][such form and] such manner as may be prescribed.

(2) A specialised 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 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of [3][two years]from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered 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-

(i) zero rated supplies made without payment of tax

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

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 or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(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

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[2] Substituted vide The Finance Act, 2022 and notified through Notf No. 18/2022-CT dated 28-09-2022 w.e.f 01.10.2022.

[3] Substituted vide The Finance Act, 2022 and notified through Notf No. 18/2022-CT dated 28-09-2022 w.e.f 01.10.2022.

(b) *such documentary or other evidence (including the documents referred to in section 33) 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 two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that 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 referred to in section 57.*

(6) *Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety percent of the total amount so claimed, [4][excluding the amount of input tax credit provisionally accepted], in such 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 complete in all respects.*

(8) *Notwithstanding anything contained in sub-section (5), 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 paid on [5]**[export]** of goods or services or both or on inputs or input services used in making such [5]**[exports]**;*

(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, or where a refund voucher has been issued;*

(d) *refund of tax in pursuance of section 77;*

[4] Words "excluding the amount of input tax credit provisionally accepted" omitted vide The Finance Act, 2023, notified through Notf. No. 28/2023 CT dated 31/7/2023, w.e.f. 01.10.2023.

[5] Substituted for "zero-rated supplies" vide The Central Goods & Services Tax (Amendment) Act, 2018 w.e.f 01.02.2019.

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

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

[6][(8A) *The Government may disburse the refund of the State tax in such manner as may be prescribed]*

(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 provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).*

(10) *Where any refund is due* [7]*[~~under the said sub-section(3)~~] to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—*

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

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

Explanation- For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

(11) *Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other 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 notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent, as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings 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*

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[6] *Inserted vide Finance (No.2) Act, 2019 and notified through Notf No. 39/2019-CT dated 31-08-2019 w.e.f. 01.09.2019.*

[7] *Words "under sub-section (3)", omitted vide The Finance Act, 2022, notified through Notf No. 18/2022-CT dated 28-09-2022 w.e.f. 01.10.2022.*

under sub-section (2) of section 27, 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 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (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 paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of 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 dispatch of goods by 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 furnished;

[8][(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(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 [9][or in Indian rupees wherever permitted by the Reserve Bank of India] (, where

[8] Inserted vide The Finance Act, 2022 and notified through Notf No. 18/2022-CT dated 28-09-2022 w.e.f. 01.10.2022.

[9] Inserted vide The Central Goods & Services Tax (Amendment) Act, 2018, w.e.f. 01.02.2019.

the supply of services 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 Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;

*(e) [10][in the case of refund of unutilised input tax credit under clause (*ii*) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period 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 or both by such person; and

(h) in any other case, the date of payment of tax.

Extract of the CGST Rules, 2017

89. Application for refund of tax, interest, penalty, fees or any other amount.

1) Any person, except the persons covered under notification issued under section 55, claiming refund of [11][any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or] any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file [12][subject to the provisions of rule 10B] an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

[13][~~Provided that any claim for refund relating to balance in the electronic cash ledger in~~

[10] Substituted vide The Central Goods & Services Tax (Amendment) Act, 2018, w.e.f. 01.02.2019. Prior to its substitution, sub-clause (e) read as "(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;"

[11]Inserted vide CGST (Second Amendment) Rules, 2022, notified through Notf no. 19/2022 dt. 28.09.2022 w.e.f. 01.10.2022.

[12] Inserted vide CGST (Eighth Amendment) Rules, 2021, notified through Notf no. 35/2021 – CT dt. 24.09.2021, brought into force w.e.f. 01.01.2022 vide Notf No. 38/2021-C.T., dated 21.12.2021.

[13]Proviso omitted vide the CGST (Second Amendment) Rules, 2022, notified through Notf No. 19/2022 dt. 28.09.2022, w.e.f. 1-10-2022. Prior to its omission, said proviso read as under: "Provided that any claim for

~~*accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:]*~~

[14][Provided that] in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

[15][[16][Provided further that] in respect of supplies regarded as deemed exports, the application may be filed by, -

a) the recipient of deemed export supplies; or

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

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed [17][only after the last return required to be furnished by him has been so furnished].

[18][Explanation. — For the purposes of this sub-rule, "specified officer" means a "specified officer" or an "authorised officer" as defined under rule 2 of the Special Economic Zone Rules, 2006.]

[19][1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is

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refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:"

[14]Substituted for "Provided also that" vide the CGST (Second Amendment) Rules, 2022, notified through Notf No. 19/2022 dt. 28.09.2022, w.e.f. 1-10-2022.

[15]Substituted vide the CGST (Tenth Amendment) Rules, 2017, notified through Notf No. 47/2017-CT dated 18.10.2017, w.e.f. 18-10-2017. Prior to its substitution, third proviso read as under: "Provided also that in respect of supplies regarded as deemed exports, the application shall be filed by the recipient of deemed export supplies:"

[16]Substituted for "Provided further that" vide the CGST (Second Amendment) Rules, 2022, notified through Notf No. 19/2022 dt. 28.09.2022, w.e.f. 01.10.2022.

[17]Substituted for "in the last return required to be furnished by him" vide the CGST (Second Amendment) Rules, 2023, notified through Notf.No. 38/2023 dated 04.08.2023, w.e.f. 4-8-2023.

[18] Inserted vide Notf no. 14/2022 – CT dt. 05.07.2022.

subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force].

2) *The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-*

a) *the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;*

b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods [20][, other than electricity];

[21][ba) statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;]

c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier

[19] Inserted vide Notf no. 35/2021 – CT dt. 24.09.2021, brought into force w.e.f. 01.01.2022 vide Notf No. 38/2021-CT dated 21.12.2021.

[20] Inserted vide Notf No. 14/2022-CT dt. 05.07.2022.

[21] Inserted vide Notf no. 14/2022 – CT dt. 05.07.2022.

for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

f) [22]*[a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer*]

g) *a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;*

h) *a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;*

i) *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 the finalisation of provisional assessment;*

j) *a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;*

k) *a statement showing the details of the amount of claim on account of excess payment of tax [23][and interest, if any, or any other amount paid];*

[24][(ka) *a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;*

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[22]*Substituted vide Notf No. 03/2019-CT dated 29.01.2019 w.e.f. 01.02.2019. Prior to its substitution, clause (f) read as under :"(f) a declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer;"*

[23] *Inserted vide Notf.No. 38/2023-CT dated 04.08.2023, w.e.f. 04.08.2023.*

[24] *Inserted vide Notf No.26/2022 – CT dt.26.12.2022.*

[kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;]

l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

[25][Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.]

Explanation.– For the purposes of this rule-

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression — "invoice" means invoice conforming to the provisions contained in section 31;

(ii) 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 by an amount equal to the refund so claimed.

4) [26][In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section

[25] Inserted vide Notf No.26/2022 – CT dt.26.12.2022.
[26] Substituted vide Notf No. 75/2017-CT dt 29.12.2017, w.e.f. 23.10.2017.

(3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply 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 other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

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

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

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

[28][(E) "Adjusted Total Turnover" means the sum total of the value of-

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

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

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[27] Substituted vide Notf No.16/2020-CT dt. 23.03.2020. Prior to its substitution, clause (C) read as under :'(C)"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or (4B) or both;'

[28] Substituted vide Notf No. 39/2018-CT dt. 04.09.2018, w.e.f. 04.09.2018. Prior to its substitution, clause (E) read as under : '(E)"Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding—

(a) the value of exempt supplies other than zero-rated supplies, and

(b) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or (4B) or both, if any, during the relevant period".

excluding-

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

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

during the relevant period];

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

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

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

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

whichever is less.]

[30][4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

[31][4B) Where the person claiming refund of unutilised input tax credit on account of zero-rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017; or

(b) availed the benefit of notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in

[29] Inserted vide Notf No.14/2022 – CT dt.05.07.2022.
[30] Substituted vide Notf No. 03/2018- CT dt. 23.01.2018 w.e.f 23.10.2017.
[31] Substituted vide Notf No. 54/2018-CT dt. 09.10.2018.

the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017,

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

5) *[32][In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-*

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - [33][{tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}].

Explanation:- For the purposes of this sub-rule, the expressions –

a) *"Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and*

b) *[34][Adjusted Total turnover shall have the same meaning as assigned to it in subrule (4)]]*

90. Acknowledgement

1) *Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.*

2) *The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of*

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[32] Substituted vide Notf No. 26/2018-CT dt. 13.06.2018 applicable retrospectively w.e.f. 01.07.2017. Prior to its substitution, it read as under: '(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:—
Maximum Refund Amount = [(Turnover of inverted rated supply of goods and services) × Net ITC ÷ Adjusted Total Turnover] - tax payable on such inverted rated supply of goods and services.
Explanation:—For the purposes of this sub-rule, the expressions—
(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule (4A) or (4B) or both; and
(b)"Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).'
[33] Substituted for "tax payable on such inverted rated supply of goods and services" vide Notf no. 14/2022-CT dt.05.07.2022
[34] Substituted vide Notf No. 74/2018-CT dt.31.12.2018. Prior to its substitution, clause (b) read as under : "(b)Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4)."

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) of rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

[35][Provided that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.]

4) Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

5) [36][The applicant may, at any time before issuance of provisional refund sanction order in FORM GST RFD-04 or final refund sanction order in FORM GST RFD-06 or payment order in FORM GST RFD-05 or refund withhold order in FORM GST RFD-07 or notice in FORM GST RFD-08, in respect of any refund application filed in FORM GST RFD-01, withdraw the said application for refund by filing an application in FORM GST RFD-01W.

6) On submission of application for withdrawal of refund in FORM GST RFD-01W, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in FORM GST RFD-01, shall be credited back to the ledger from which such debit was made.]

91. Grant of provisional refund

1) The provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the condition that 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 existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

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

[35] Inserted vide Notf No. 15/2021-CT dated 18.05.2021.
[36] Inserted vide Notf No. 15/2021-CT dated 18.05.2021.

sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in FORM GST RFD-04, 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 the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90.

[37][Provided that the order issued in FORM GST RFD-04 shall not be required to be revalidated by the proper officer]

3) The proper officer shall issue a payment [38][payment order] in FORM GST RFD-05 for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund [39][on the basis of a consolidated payment advice]

[40][Provided that the [38][payment order] in FORM GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said [38][payment order] was issued].

[41][4) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3).]

92. Order sanctioning refund

1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 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 (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:

[42][~~Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07.~~]

[43][1A)Where, upon examination of the application of refund of any amount paid as tax other

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[37] Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f 01.02.2019.

[38] Substituted vide Notf no. 31/2019-CT dt. 28.06.2019 with effect from 24.09.2019 as notified by Notf No. 42/2019 dated 24.09.2019 for "payment advice".

[39] Inserted vide Notf No. 49/2019-CT dt. 09.10.2019, w.e.f 24.09.2019.

[40] Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f 01.02.2019

[41] Inserted vide Notf No. 49/2019-CT dt. 09.10.2019, w.e.f. 24.09.2019.

[42] Omitted vide Notf No. 15/2021-CT dt 18.05.2021. Prior to its omission, proviso read as under : "Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07."

[43] Inserted vide Notf No.16/2020-CT dt. 23.03.2020.

than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger].";

2) *Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of sub-section (10) or, as the case may be, sub-section (11) of section 54, he shall pass an order in [44][Part A] of FORM GST RFD-07 informing him the reasons for withholding of such refund.*

   [45][Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of FORM GST RFD- 07.]

3) *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-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 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 provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:*

   Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

4) *Where the proper officer is satisfied that the amount refundable under sub-rule (1) [46][or sub-rule (1A)] or sub-rule (2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue a [47][payment **order]** in FORM GST RFD-05 for the amount of refund and the same shall be*

[44] Substituted for the word "Part B" vide Notf No. 15/2021-CT dt. 18.05.2021.
[45] Inserted vide Notf No. 15/2021-CT dt 18.05.2021.
[46] Inserted vide Notf No.16/2020-CT dated 23.03.2020.
[47] Substituted for "payment advice" vide Notf No. 31/2019-CT dt. 28.06.2019 w.e.f. 24.09.2019 as notified by Notf No. 42/2019 dated 24.09.2019.

electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund [48][on the basis of a consolidated payment advice].

[49][Provided that the order issued in FORM GST RFD-06 shall not be required to be revalidated by the proper officer:

Provided further that the [47][payment order] in FORM GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said [47][payment order] was issued.]

[48][4A) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (4)]

*5) Where the proper officer is satisfied that the amount refundable under sub-rule (1) [50][or sub-rule (1A)] or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue [51][**a payment order]** FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.*

93. Credit of the amount of rejected refund claim

1) Where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

2) Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

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

94. Order sanctioning interest on delayed refunds.-

*[52][(1)] Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a [53][payment order] in **FORM GST RFD-05** , specifying*

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[48] Inserted vide Notf No. 31/2019-CT dt. 28.06.2019 w.e.f. 24.09.2019 as notified through Notf No. 42/2019 dt. 24.09.2019.

[49] Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f 01.02.2019.

[50] Inserted. Vide Notf No.16/2020-CT dated 23.03.2020.

[51] Substituted vide Notf No. 31/2019-CT dt. 28.06.2019 with effect from a w.e.f. 24.09.2019 as notified by Notf No. 42/2019 dated 24.09.2019 for "an advice".

[52] Renumbered as sub-rule (1) vide Notf.No. 38/2023-CT dated 04.08.2023, w.e.f. 1-10-2023.

[53] Substituted vide Notf No. 31/2019 – CT dated 28.06.2019 with effect from 24.09.2019 as notified by Notf No. 42/2019-CT dated 24.09.2019 for "payment advice".

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.

[54][(2) The following periods shall not be included in the period of delay under sub-rule (1), namely:-

(a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, that the applicant takes to-

(i) furnish a reply in FORM GST RFD-09, or

(ii) submit additional documents or reply;

and

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.]

95. Refund of tax to certain persons

1) [55][Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued under section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal or otherwise, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11.]

2) An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.

3) The refund of tax paid by the applicant shall be available if-

a) [56][the inward supplies of goods or services or both were received from a registered person against a tax invoice.]

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54 *Inserted vide Notf.No. 38/2023-CT dated 04.08.2023, w.e.f. 1-10-2023.*

55 Substituted vide Notf No. 75/2017-CT dt. 29-12-2017. Prior to its substitution, sub-rule (1) read as under: "(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11, prepared on the basis of the statement of the outward supplies furnished by the corresponding suppliers in FORM GSTR-1".

*56 Substituted vide Notf No. 26/2018-CT dt. 13.06.2017. Prior to its substitution, it read as under: "(a) the inward supplies of goods or services or both were received from a registered 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~~];"*

**Omitted vide Notf No. 75/2017 dt. 29-12-2017.*

b) name and Goods and Services Tax Identification Number or Unique Identity Number 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.

[57][Provided that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10.]

4) The provisions of rule 92 shall, mutatis mutandis, apply 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 this Chapter, such treaty or international agreement shall prevail.

*[58]**[95A. ****]**.*

[57] Inserted vide Notf No. 40/2021-CT dated 29.12.2021, w.e.f. 01.04.2021.

[58] Omitted vide Notf No. 14/2022 – CT dated 05.07.2022, w.e.f. 01.07.2019. Prior to its omission, rule 95A read as under: "95A. Refund of taxes to the retail outlets established in departure area of an International Airport beyond immigration counters making tax free supply to an outgoing international tourist.—(1) Retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.

(2) Retail outlet claiming refund of the taxes paid on his inward supplies, shall furnish the application for refund claim in FORM GST RFD-10B on a monthly or quarterly basis, as the case may be, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(3) The self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice shall be submitted along with the refund application.

(4) The refund of tax paid by the said retail outlet shall be available if—

(a)the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;

(b)the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;

(c) name and Goods and Services Tax Identification Number of the retail outlet is mentioned in the tax invoice for the inward supply; and

(d)such other restrictions or conditions, as may be specified, are satisfied.

(5) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

96. Refund of integrated tax paid on goods [59][or services] exported out of India

1) The shipping bill filed by [60][an exporter of goods] shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

*a) the person in charge of the conveyance carrying the export goods duly files an [61][*a departure manifest or*] export manifest or an export report covering the number and the date of shipping bills or bills of export; and*

b) [62][the applicant has furnished a valid return in FORM GSTR-3B

Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;]

c) [63][the applicant has undergone Aadhaar authentication in the manner provided in rule 10B.]

2) The details of the [64][relevant export invoices in respect of export of goods] contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

[65][****].

Explanation.—For the purposes of this rule, the expression "outgoing international tourist" shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purpose.

[59] Inserted vide Notf No. 75/2017-CT dt. 29.12.2017. Applicable w.e.f. 23.10.2017.

[60] Substituted for "an exporter" vide Notf No. 03/2018-CT dt. 23.01.2018 w.e.f 23.10.2017.

[61] Inserted vide Notf No. 74/2018-CT dt. 31.12.2018.

[62] Substituted vide Notf No.14/2022 – CT dt. 05.07.2022, applicable retrospectively w.e.f. 01.07.2017. Prior to its substitution, clause (b) read as under: "(b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be."

[63] Inserted vide Notf No. 35/2021 – CT dt. 24.09.2021. Brought into force w.e.f. 01.01.2022 vide Notf No. 38/2021-C.T., dated 21.12.2021.

[64] Substituted for "relevant export invoices" vide Notf no. 03/2018-CT dt. 23.01.2018, w.e.f. 23.10.2017.

[65] Omitted vide Notf.No. 38/2023-CT dated 04.08.2023, w.e.f. 4-8-2023. Prior to their omission, provisos were inserted vide Notf No. 51/2017 – CT dt. 28.10.2017, read as under:

"Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the

3) *Upon the receipt of the information regarding the furnishing of a valid return in [66][FORM GSTR-3B], from the common portal, [67][the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods] and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.*

4) *The claim for refund shall be withheld where,-*

   a) *a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or*

   b) *the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, [68][1962; or].*

   c) *[69][the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.]*

5) *[70][****]*

[71]5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall

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return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:
Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.".

[66] Substituted vide Notf No.19/2022-CT dt. 28.09.2022 w.e.f 01.10.2022 for "FORM GSTR-3 or FORM GSTR-3B as the case may be".

[67] Substituted vide Notf No.03/2018-CT dt. 23.01.2018, w.e.f 23.10.2017 for "the system designated by the Customs shall process the claim for refund".

[68] Substituted for "1962" vide Notf No.14/2022-CT dt. 05.07.2022, applicable w.r.e.f 01.07.2017.

[69] Inserted vide Notf No.14/2022-CT dt. 05.07.2022, applicable w.r.e.f 01.07.2017.

[70] Omitted vide Notf No. 14/2022-CT dt. 05.07.2022, w.e.f. 01.07.2017. Prior to its omission, sub-rule (5) read as under: "(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of Central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal."

[71] Inserted vide Notf No.14/2022 dt. 05.07.2022, applicable w.r.e.f 01.07.2017.

be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

5B) *Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.*

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

6) [72]*[****]*

7) [73]*[****]*

8) *The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.*

9) [74]*[The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89]*

10) [75]*[The persons claiming refund of integrated tax paid on exports of goods or services*

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[72] *Omitted vide Notf No. 14/2022 – CT dt. 05.07.2022, applicable retrospectively w.e.f 01.07.2017. Prior to its omission, sub-rule (6) read as under: "(6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part A of FORM GST RFD-07."*

[73] *Omitted vide Notf No. 14/2022 – CT dt. 05.07.2022, applicable retrospective w.e.f 01.07.2017. Prior to its omission, sub-rule (7) read as under: "(7) Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount by passing an order in FORM GST RFD-06 after passing an order for release of withheld refund in Part B of FORM GST RFD-07".*

[74] *Substituted vide Notf No. 3/2018-CT dt. 23.01.2018 w.e.f 23.10.2017. Prior to its substitution, sub-rule (9) read as under: "(9) The persons claiming refund of integrated tax paid on export of goods or services should not have received supplies on which the supplier has availed the benefit of notification No. 48/2017-Central Tax, dated 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated 23rd October, 2017."*

[75] *Substituted vide Notf No. 54/2018-CT dt. 09.10.2018. Prior to its substitution, sub-rule (10) read as under: "(10) The persons claiming refund of integrated tax paid on exports of goods or services should*

should not have –

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme]]]

[76][Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.]

[77][96A. [78][Export] of goods or services under bond or Letter of Undertaking

1) Any registered person availing the option to supply goods or services for export

not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), vide number G.S.R. 1305(E), dated the 18th October, 2017 or Notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 1320 (E), dated the 23rd October, 2017 or Notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 1321(E), dated the 23rd October, 2017 or Notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 1272(E), dated the 13th October, 2017 or Notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 1299(E) dated the 13th October, 2017."

[76] Inserted vide Notf. No. 16/2020-CT dated 23.03.2020 w.e.f 23.10.2017.

[77] Inserted vide Notf No.15/2017-C.T., dated 01.07.2017, w.e.f. 01.07.2017.

[78] Substituted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f 01.02.2019 for "Refund of integrated tax paid on export".

without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of—

a) fifteen days after the expiry of three months, [79][or such further period as may be allowed by the Commissioner,] from the date of issue of the invoice for export, if the goods are not exported out of India; or

b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange [80][or in Indian rupees, wherever permitted by the Reserve Bank of India].

2) The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

[81][Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.]

3) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.

4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of sub-rule (3) shall be restored immediately when the registered person pays the amount due.

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[79] Inserted vide Notf No. 47/2017-CT dt. 18.10.2017
[80] Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 w.e.f 01.02.2019
[81] Inserted vide Notf No. 51/2017-CT dt. 28.10.2017.

5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

6) The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax;]

[82][96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised. *–*

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50.

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.]

[83] ***[96C. Bank Account for credit of refund***

For the purposes of sub-rule (3) of rule 91, sub-rule (4) of rule 92 and rule 94, —bank account shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number.

[82] Inserted vide Notf No.16/2020-CT dt. 23.03.2020.
[83] Inserted vide Notf No. 35/2021-CT dt. 24.09.2021. Applicable w.e.f a date yet to be notified.

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.]

[84]***[97A. Manual filing and processing***

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.]

Related Provisions of the Statute

Section	Description
2(39)	Definition of 'Deemed Exports'
2(42)	Definition of 'Drawback'
17(2)	Taxable supplies include zero rates supplies
25(9)	Registration of UN agencies and notified persons for claiming refund
31(3)(e)	Refund Voucher where no supply is made
49(6)	Refund of balance in electronic cash or credit ledger
51(8)	Refund of tax deducted in excess or erroneously
60(5)	Refund of provisionally paid tax
65(7)	Audit of erroneous refund by tax authorities
66(6)	Special Audit of erroneous refund
73,74,75	Demand of erroneous refund
77 of CGST, Section 19 of IGST and section 12 of UTGST	Tax wrongfully collected and paid to Central Government or State Government
122(1)(viii)	Penalty for fraudulent obtaining of refund
132(1)(b)	Prosecution for issue of invoice resulting in wrongful refund of tax

[84] *Inserted vide Notf No. 55/2107-CT dt. 15.11.2017*

132(1)(e)	Prosecution for fraudulent obtaining of refund
142(1)	Refund of duty paid under existing law on return of goods
147	Deemed Exports
170	Rounding off of Refund

IGST Act

2(5)	Export of Goods
2(6)	Export of Services
7(5)	Inter-State supply
11	Place of supply of goods exported out of India
13	Place of supply of services when location of supplier or location of recipient is outside India.
15	Refund of Integrated tax paid on supply of goods to tourist leaving India
16	Zero Rated Supply

54.1 Introduction

Section 54 deals with the legal and procedural aspects of claiming refund by any person in respect of -

- any tax (which was excess paid);
- interest paid on such tax; or
- any other amount paid (which was not required to be paid);
- tax paid on export of goods or services or both
- tax paid on the deemed exports as notified in *N.N. 48/2017 C.T. dated 18.10.2017* (as amended by *N.N. 1/2019 – C.T. dated 15-01-2019*);
- unutilized input tax credit at the end of tax period in cases of:
    - zero rated supplies as defined in sec. 16(1) of the IGST Act, 2017, other than when
        - goods are subjected to export duty.
        - the supplier avails drawback of central tax or claims refund of integrated tax paid on such supplies. [After the introduction of the Customs and Central Excise Duties Drawback Rules, 2017 this condition has become invalid]
    - tax of inputs being higher than rate of tax on output supplies, other than NIL rated or fully exempted.

- Supply which is not provided, either wholly or partially and for which invoice has not been issued or refund voucher has been issued.
- Any other amount paid on intra-State supply which is subsequently held to be inter-State supply and vice versa.
- Refund to Casual Taxable Person/ Non-Resident Taxable Person (subject to furnishing all returns for the period of continuity of registration)
- Refund to an unregistered person

This section provides for conditions and procedures for claiming refund without specifying all the circumstances in which the refund will be eligible to an applicant. Some other circumstances where refund may be granted but are not covered by section 54 may be as follows:

(a) Refund of duty/tax under existing law

(b) Refund in case of International Tourist

(c) Refund of Provisionally paid tax

(d) Refund of Compensation Cess

(e) Refund on account of Excess or Erroneous Deduction

(f) Refund on Inward Supplies to Canteen Stores Department

(g) Refund on Inward Supplies to UN and agencies

(h) Refund of Interest against restoration of ITC

(i) Refund of Interest against restoration of reduction in output tax liability

(j) Refund due to order of Appellate Authority/Court

(k) Refund of Central share in CGST & IGST in hilly areas

(l) Refund of tax under Seva Bhoj Yojna

Thus, it can be inferred that refund is possible only when

(a) tax, interest or any other amounts are physically paid in cash and

(b) in respect of exports / SEZ supplies/inverted duty rate/ excess payment in the form of input tax.

54.2 Analysis

(i) Refund is available in respect of (a) zero-rated supplies (b) inverted rate supplies and (c) other payments. It is important to note that granting refund requires strict adherence to the requirements of the refund provision. Refer table (discussed below) of various

refund entitlements. Care must be taken to satisfy the requirements of 'export' and discussion under section 2(5) and 2(6) provides some additional information in this regard. Reference must also be had to the authority available in *Mafatlal Industries Ltd. & Ors. V. UoI & Ors. 1997 (89) ELT 247 (SC)* for the various principles that must be appreciated in the context of claiming refund.

(ii) This provision states that the application for refund shall be made before the expiry of two years from the relevant date. The definition of relevant date in different circumstances is discussed here. It is important to note that section 54 operates not only as the machinery provision for disbursement of refund arising under provisions such as section 55 of CGST Act, section 16 of IGST Act among others, section 54 is also a substantive provision vesting the Registered Person with right to claim refund, for example, section 54(3). While it plays these roles, it also effectively bars any other avenue for claiming refund. This bar operates by not listing any residual provision for claiming refund. Conspicuous by its absence is the provision to claim refund of unutilized credit when a registration is being cancelled where there is still some credit remaining after satisfying credit reversal requirements under section 29(5). This is a significant aspect to note, that there is no residual avenue to claim refund in 'any other cases' in section 54.

(iii) In case of taxable person claiming refund of any balance in the electronic cash ledger, reference of clarification in *Circular No. 166/22/2021-GST dated 17.11.2021* has to be taken in cognizance where it has been clarified that the provisions of sub-section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.

(iv) Following persons are entitled to a refund of tax paid by it on inward supplies of goods or services or both –

(a) A specialized agency of the United Nations Organization or

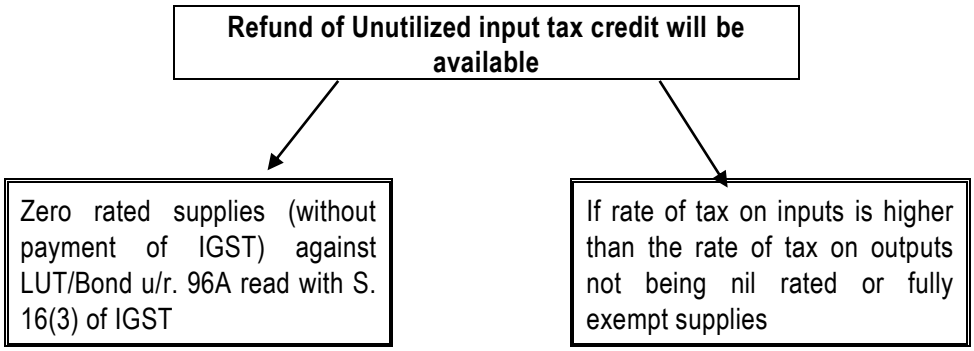
(b) Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,

(c) Consulate or Embassy of foreign countries or

(d) any other person or class of persons as notified under section 55.

Such agencies may make an application for refund, in such specified form and manner as may be prescribed within two years from the last day of the quarter in which such supply was received.

(v) Refund of the unutilized input tax credit can be claimed at the end of any tax period in the following cases:



However, refund on zero rated supplies is also not eligible in the following cases:

(a) If the goods exported out of India are subject to export duty;

(b) If supplier claims refund of output tax paid under IGST Act.

(c) If the supplier avails duty drawback of IGST/CGST on such supplies.

The manner of calculation of refund amount in case of refund of unutilized ITC in case of zero-rated supplies and inverted duty rate is provided in rule 89(4) and rule 89(5) and the details are discussed in para 54.6.

Note: Drawback during transition period from 01-07-2017 to 30-09-2017

In order to ensure smooth transition to the GST regime, Government allowed the old Duty Drawback scheme to continue for a period of three months i.e. from 1.7.2017 to 30.9.2017. The exporters could, for exports made during this period, continue to claim the composite rates subject to certain additional conditions. During the transition period, exporters could also claim Brand rate of duty/tax incidence as they have been doing earlier. The conditions imposed for claiming these composite rates aimed to ensure that the exporters do not claim composite AIRs of duty drawback and simultaneously avail input tax credit of Central Goods and Services Tax (CGST) or Integrated Goods and Services Tax (IGST) on the export goods or on inputs and input services used in manufacture of export goods or claim refund of IGST paid on export goods. Further, an exporter claiming composite rate shall also be barred to carry forward Cenvat credit on the export goods or on inputs or input services used in manufacture of export goods in terms of the CGST Act, 2017. The exporters were, however required to give a declaration and certificates at the time of export. Similar checks shall apply while determining the Brand rate of drawback. While a transition period of three months had been allowed, the exporters had an option to claim only Customs portion of AIRs of duty drawback of the Schedule of AIRs of duty drawback and avail input tax credit of CGST or IGST or refund of IGST paid on exports. [*Circular 22/2017-Customs dated 30-06-2017*]

Note: Drawback allowed for certain duties/taxes

A supplier availing drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of central tax/State tax/Union territory tax/integrated

tax/compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of Central tax. [*Circular 37/11/2018 dated 15-03-2018 para 2.1 superseded by Circular 125/44/2019 dated 18-11-2019 Para 40]*

(vi) After the introduction of the Customs and Central Excise Duties Drawback Rules, 2017 w.e.f. 01.10.2017, the drawback was restricted to customs duty. Hence, the condition connected to drawback in section 54(3) is not relevant in current scenario. The application for refund should be accompanied by the documents which clearly establish that refund is due to applicant. These documents are prescribed by Rule 89(2), and details are discussed in para 54.4.

(vii) In case of refund under section 54(8)(e) of the CGST Act the applicant is required to furnish documents and other evidence to establish that

(a) 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 him (e.g., Purchase Invoices, Electronic Credit ledger, Returns), **OR**

(b) 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 paid by him (e.g., Sale Invoices, Electronic Cash Ledger, Challans for payment of tax, returns offsetting liability etc.)

The applicant is also required to establish with the help of documentary and other evidence that the incidence of such tax and interest had not been passed on to any other person.

(viii) Further to the above conditions, if the amount of refund claim is less than rupees 2 lakh, it shall not be necessary for the applicant to furnish any documentary and other evidence but self-declaration based on documentary and other evidences available with the claimant, certifying that he has not passed on the incidence of such tax and interest would suffice to claim refund.

> As per **section 49(9),** every person who has paid the tax on goods or services or both under this Act shall, **unless the contrary is proved by him,** be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.
>
> As per **explanation (ii) to rule 89(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.

(ix) The refund relating to an application if found complete in all respects, will be sanctioned within sixty days from the date of receipt of application.

(x) The refund will be sanctioned to the claimant, in the following cases –

- refund of tax paid on export of goods or services or both
- refund of unutilized input tax credit on inputs or input services used in making exports
- refund of unutilized input tax credit on inputs accumulated on account of inverted duty structure;
- the tax / interest / other amounts paid by the applicant, if he had not passed on the incidence of tax to any other person; or
- refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued or where a refund voucher has been issued
- refund of tax in pursuance of section 77 which means a registered person who has paid CGST and SGST/UTGST on a transaction considered by him as INTRA-STATE supply but held to be INTER-STATE supply;
- the tax or interest borne by notified class of applicants (done by Central/State Government on the recommendation of the council);

The above categories of refunds shall be paid to the applicant and shall not go to consumer welfare fund irrespective of the fact there is contrary order in:

(a) Judgment, Decree, Order or direction of appellate Tribunal or any court

(b) Provision in the CGST Act

(c) Rule made under CGST Act

(d) Law for the time being in force

Barring above cases, the refund amount shall be credited to consumer welfare fund and refund shall not be granted to the applicant. Hence it is important for applicant to establish that his refund application falls under any of above categories.

(xi) In case of refund claimed is on account of zero-rated supply of goods and/or services, the proper officer may refund, on provisional basis, ninety percent of the total amount claimed. This refund of 90% will be on a provisional basis, and will be subject to conditions, limitations and safeguards. Remaining 10% may be refunded after due verification of documents furnished by the applicant.

Note: As per rule 91, provisional refund shall be granted subject to the condition that 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 erstwhile law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

As per para 46 of *Circular 125/44/2019 dated 18-11-2019*, the facility of export under LUT is available to all exporters in terms of *Notification No. 37/2017- Central Tax dated 4th October, 2017*, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the *Circular No. 8/8/2017-GST dated 4th October, 2017*, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond. It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self–declaration with every refund claim where the exports have been made under LUT is not warranted.

Further, as per *Circular 40/14/2018-GST dated 06-04-2018*, the amendments in *Circular No. 8/8/2017-GST* made clear that application for LUT shall be done on the common portal, & it shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application reference number (ARN), is generated online.

Note: The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund is due to the applicant then he shall make an order in FORM GST RFD-04, 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 the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90 (refer para 54.10) i.e., RFD-02.

Note: Also, the proper officer shall issue a payment advice in FORM GST RFD-05 for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

Note: As per *Circular 125/44/2019-GST dated 18.11.2019*, it has been decided by the competent authority to sanction refund of input tax credit at this juncture. However, the registered persons applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted manually along with the refund claim till the same is available in FORM RFD-01 on the common portal.

(xii) In case where refund is due to a registered person, the refund due will be either withheld or deducted in cases where –

- A person defaults in furnishing any return;
- A person is required to pay any tax, interest or penalty ordered, which is not stayed by Court or Appellate Authority within the last date for filing an appeal under this act.

(xiii) The deduction from refund due may be tax, interest, penalty, fee or any other amount which remains unpaid under

(a) GST Act or

(b) erstwhile law.

(xiv) In cases, where the refund is a consequence of an order and such order is in –

- appeal; or
- further proceeding; or
- Where any other proceeding under this Act is pending

And the Commissioner is of the opinion that grant of refund would affect the revenue adversely in the appeal or proceeding on account of malfeasance or fraud committed, the Commissioner may withhold the refund till such time as it may be determined. This can be done only after affording the taxable person an opportunity of being heard.[S. 54(11)]

The Government vide *Notification No. 13/2017- Central Tax dated 28-06-2017* has - prescribed, on the recommendation of the Council, 6% as the rate of interest for a refund withheld under sub-section (11) of section 54.

Procedure to claim refund in FORM GST RFD-01 subsequent to favourable order in Appeal or Any Other Forum – *(Circular No. 111/30/2019 – GST dated 3rd October, 2019)*

The Central Board of Indirect Taxes and Customs (CBIC) has issued clarifications on the procedure to be followed by a registered person to claim refund subsequent to a favourable order in appeal or any other forum against the rejection of a refund claim in FORM GST RFD-06.

In a Circular issued on 3rd October, the CBIC has clarified that "Appeals against the rejection of refund claims are being disposed of offline as the electronic module for the same is yet to be made operational. As per rule 93 of the Central Goods and Services Tax Rules, 2017, where an appeal is filed against the rejection of a refund claim, re-crediting of the amount debited from the electronic credit ledger, if any, is not done till the appeal is finally rejected. Therefore, such rejected amount remains debited in respect of the particular refund claim filed in FORM GST RFD-01.

"In case a **favourable order** is received by a registered person in appeal or in any other forum in respect of a refund claim rejected through issuance of an order in FORM GST RFD-06, the registered person would file a fresh refund application under the category "Refund on account of assessment/provisional assessment/appeal/any other order" claiming refund of the amount allowed in appeal or any other forum. Since the amount debited, if any, at the time of filing of the refund application was not re-credited, the registered person shall not be required to debit the said amount again from his

electronic credit ledger at the time of filing of the fresh refund application under the category "Refund on account of assessment/provisional assessment/appeal/any other order". The registered person shall be required to give following details:

(a) Type of the Order (appeal/any other order),

(b) Order No., Order date and

(c) The Order Issuing Authority.

(d) Copy of order of Appellate or other Authority.

(e) Copy of refund rejection order in form GST RFD-06 issued earlier against which appeal was preferred.

The proper officer would sanction the amount of refund as allowed in appeal or in subsequent forum which was originally rejected and shall make an order in FORM GST RFD 06 and issue payment order in FORM GST RFD 05 accordingly. The proper officer disposing of the application for refund under the category "Refund on account of assessment/provisional assessment/appeal/ any other order" shall also ensure re-credit of any amount which remains rejected in the order of the Appellate (or any other Authority).

(xv) The amount of advance tax deposited by a casual taxable person or a non-resident taxable person at the time of taking registration would be refunded only after furnishing all the returns required under section 39, of the entire period for which the certificate of registration granted to him had remained in force.

Note: As per rule 89, refund of any amount, after adjusting the tax payable by the applicant casual taxable person or non-resident taxable person out of the advance tax deposited by him at the time of registration, shall be claimed in the last return required to be furnished by him

(xvi) No refund shall be granted or paid to an applicant or consumer welfare fund, whether it is final refund or provisional refund (provisional refund is granted in case of refund of unutilized ITC against zero rated supplies) if the amount is less than rupees one thousand. As per Para 60 *of Circular 125/44/2019-GST dated 18.11.2019*, limit of rupees one thousand shall be applied for each tax head separately and not cumulatively. The limit would not apply in cases of refund of excess balance in the electronic cash ledger [clarified vide. *Circular No 166/22/2021-GST dated 17.11.2021*]. Officers have been directed to reject claims of refund from the electronic credit ledger for less than one thousand rupees and re-credit such amount by issuing an FORM GST PMT 03.

(xvii) The Government vide *Notification No. 20/2018- Central Tax (Rate) dated 26-07-2018* has allowed for refund of accumulated input tax credit on account of inverted duty structure on fabrics variants (10 categories of fabrics) which was earlier restricted and not available for such benefit. This allowance of refund becomes effective from date of

August 1, 2018, with a condition that the balance of accumulated input tax credit lying unutilized up to the month of July 2018 shall lapse. Thus, refund of inverted duty structure is available for the 10 variants of fabrics from August 1, 2018 and hence the Input tax credit on procurements prior to this effective date is to be reversed as refund for such credit was not available. However, Gujarat HC has held that 'lapse' of (vested) credits is NOT permissible in *Shabnam Petrofils Pvt. Ltd. v. UoI SCA No.16213/2018 (Guj.).*

The Government has clarified that the restriction is applicable only for input tax credit on goods, the said restriction does not apply on input tax credit on input services and capital goods.

Time Period for filing refund application

Relevant date: The relevant date is crucial to determine the time within which the refund claim has to be filed. If the refund claim is made after the relevant date, the refund claim would be rejected and there is no provision in the Act to condone the delay in filing refund claim and accept delayed refund claims. Explanation 2 to section 54 of the CGST Act provides the relevant date for different types of refund cases as under:

- Refund of tax paid on goods exported or tax paid on inputs/input service
  - If exported by sea or air ->date when the ship or the aircraft leaves India; or
  - If exported by land ->date when such goods pass the Customs frontier; or
  - If exported by post ->date of dispatch of goods by concerned Post Office to a place outside India.
- Deemed exports supply of goods->the date on which the return relating to such deemed export is furnished.
- Refund of tax paid on such services exported itself or tax paid on inputs/input service
  - If supply of service is completed prior to the receipt of payment–>date of receipt of payment in convertible foreign exchange or in Indian rupees where ever permitted by RBI;
  - If payment for the service received in advance prior to the date of issue of invoice –> date of issue of invoice.
- Refund of tax paid or tax paid on inputs/input services on account of zero-rated supply of gods and services to SEZ unit / SEZ developer shall be the due date for furnishing of return u/s 39 for the tax period for such supplies.
- Refund of tax as a consequence of judgment, decree, order or direction of Appellate authority, Appellate Tribunal or any Court -> date of communication of such judgement/ decree/order/direction.

- Refund of unutilized input tax credit accumulated due to inverted duty rate–due date for furnishing return for the tax period in which such claim for refund arises;
- Provisionally paid tax - the date of adjustment of tax after the final assessment.
- In the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- In any other case, the date of payment of tax.

Circular No. 137/07/2020-GST dated 13.04.2020-

Circular clarifying issues in respect of challenges faced by registered persons in implementation of provisions of GST issued. The circular has been put forward below for ready reference:

Q1. An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

A. In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

Q2. An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?

A. In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules.

The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".

Q3. Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

A. In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

To summarise the above:

Situation of Refund	**2 years from the Relevant Date as under**
On account of excess payment	Date of payment of tax
On account of Export of Goods by Sea or Air	Date on which Ship or Aircraft in which goods are loaded, leaves India
On account of Export of Goods by Land	Date on which goods pass the customs frontiers of India
On account of Export of Goods by Post	Date of dispatch of goods by post office concerned to a place outside India.
On account of Export of Services before payment	Date of receipt of convertible foreign exchange or India rupees, where permitted by RBI.
Export of service against advance payment	Date of issue of invoice
On account of deemed exports	Date of filing return
On account of finalization of provisional assessment	Date of the adjustment of the tax after the final assessment.
On account of supplies to SEZ Unit/ developer (both goods or services)	Due date for filing of return u/s 39 for the tax period
In pursuance of an order in favour of the taxpayer by the Appellate Authority/ Appellate Tribunal / Court	Date of communication of the judgement/ order/ direction
On account of accumulated unutilised input tax credit of GST under inverted duty	Due date of furnishing of return for the period in which claim for refund arises
Claim of refund by a person not being a supplier, [e.g., UIN Holder or recipient claiming refund for deemed exports u/r 89(1) clause(a) to 3rd Proviso]	Date of receipt of goods or services by such person or UIN holder

Situation of Refund	2 years from the Relevant Date as under
Claim of refund by a Casual/Non-resident taxable person	Relevant date is Date of payment of tax. But refund to be claimed in last return to be furnished by casual/ non-resident taxable person
Claiming refund under section 77 of the CGST Act, 2017 of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply (or) vice versa under section 19 of the IGST Act, 2017.	The date of **payment of tax** under the correct head.

Notification No. 13/2022 dated 5th July 2022 issued under section 168A of the CGST Act, excluded the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act. This Notification brought a very important relief to the taxpayers claiming refund by giving additional time period post COVID.

For instance, if a Refund Application for export of goods is to be filed for December 2019 (assuming all the goods left India on 31st December 2019 itself). The normal time limit of 2 years under section 54 will commence from 31st December 2019. Due to the above extension, now the period of limitation will be calculated as follows:

a) 31st December 2019 to 28th February 2020 – 2 months

b) 1st March 2020 to 28th February 2022 – to be excluded for calculation

c) 1st March 2022 to 31st December 2023 – 22 months

The refund application can be filed any time upto 31st December 2023 and will still be considered to have been filed within the time limit. This is the impact of this Notification.

54.3 Manner and Timing of Refund

Rule 89(1) facilitates a taxable person to claim refund in following manner under various circumstances:

S. No.	Scenarios	Manner to claim refund
1.	Refund of any tax, interest, penalty, fees or any other amount paid	File an application electronically in FORM GST RFD-01 through the common portal, *[subject to Aadhaar authentication of registered person [Rule 10B]].

2.	Refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49	File an application electronically in FORM GST RFD-01 through the common portal, *[subject to Aadhaar authentication of registered person [Rule 10B]].

* From 01.01.2022, Aadhaar authentication of registered person is mandatory for filing refund application in Form RFD-01 as per rule 89(1) read with rule 10B.

Note: In terms of *Notification No. 55/2017 – Central Tax dated 15th November 2017*, rule 97A has been inserted in the Central Goods and Service Tax Rules, 2017 providing for manual filing of refund application and its processing. As per rule 97A, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

In other words, the refunds may be filed manually and the processing of refund with respect to any notice, reply or order, among others, can also be issued / filed manually. (Not relevant in present online Eco-System)

Unregistered persons have also been enabled for filing refund applications, but only in specific scenarios. *Circular No. 188/20/2022-GST dated 27th December 2022* prescribes the manner of filing such application. The scenarios envisaged in the circular are:

a) Construction of flats/buildings – on cancellation of contract/agreement

b) Long term insurance policies with upfront payment of premium, if terminated

Even in the above scenarios, refund can be applied by the unregistered person, only when the time limit for issuing credit note by the supplier u/s 34 has been expired.

As per the provisions of clause (g) of explanation (2) under section 54 of the CGST Act, the relevant date for filing refund, in respect of cases of refund by a person other than supplier, is the date of receipt of goods or service or both. However, in above cases, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

Frequency of filing refund application

In para 2 of the *Circular No. 135/05/2020-GST dated 31.03.2020,* it has been clarified that the applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and © in para 3 above

must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.

In case of casual taxable person and non-resident taxable person, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under at the time of registration, shall be claimed in the last return required to be furnished by him. Hence casual taxable person or non-resident taxable person need not file monthly or quarterly refunds and has to file refund only in last of his returns.

As per *Circular 37/2018 dated 15-03-2018*, Para 11.2:

(a) Exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters.

(b) The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

However, by circular mentioned above, it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, Circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e., the restriction on bunching of refund claims across financial years shall not apply. [*Circular No.135/05/2020 – GST*]

Refund to be claimed after filing of returns applicable to claimant

As per *Circular 24/2017 dated 21-12-17* [Para 2], refund claim for a tax period may be filed only after filing the details in FORM GSTR-1 for the said tax period. It is also to be ensured that a valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed.

However, In terms of *Circular No. 125/44/2019-GST dated 18.11.2019*, Para 6, it has been clarified that for an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, the return as filed by them in terms of the rules applicable to them, i.e. FORM GSTR-4 for a composition taxpayer, FORM GSTR-6 for an ISD and FORM GSTR-5 for a non-resident taxable person shall be sufficient instead of filing of the details in FORM GSTR 1 & FORM GSTR 3B.

Refund for supplies to SEZ to be filed after being endorsed for authorized operation

In respect of supply of goods to SEZ Unit/Developer, application for refund shall be filed after such goods have been admitted in full in SEZ for authorized operations. An endorsement by the specified officer of the SEZ is required as evidence of admission of goods in full for authorized operations. Refer www.sezindia.nic.in for list of services pre-approved to be entered into authorized operations.

In respect of supply of services to SEZ Unit/Developer application for refund shall be filed after evidence regarding receipt of services for authorised operations has been endorsed by the specified officer of the SEZ.

Note:

The above discussion does not include:

(a) The manner of filing refund application for refund of IGST paid on zero rated supplies, which are discussed in Para 54.7

(b) The manner of filing refund application by person covered by section 55, which is discussed in Para 55.

Refund Application of IGST for supplies to SEZ to be filed only after matching of tax payment between GSTR 3B and GSTR-1

While filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero-rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in **FORM GST RFD-01** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero rated supplies) filed for the corresponding tax period. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2021, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.] *Para 3 of the Circular No. 125/44/2019 – GST dated 18.11.2019.*

54.4 Documentary Evidence:

As per section 54(4)(a), application for refund should be accompanied by documentary evidence to establish that refund is due to the applicant. The documents in this regard are prescribed in Rule 89(2). As per Rule 89(2), the above application(s) shall be accompanied by following documentary evidences to establish that refund is due to the applicant.

S. No.	Scenarios	Documents
1.	Refund of Pre-deposit as per sub-section (6) of section 107 and sub-section (8) of section 112 [Pre deposit is made for entertaining the appeal against the order]	Reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or **OR** Reference number of the payment of the pre-deposit amount.
2.	Refund on account of export of goods other than electricity	A statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices. **Note:** Insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon [Para 12 of Circular 37/11/2018-GST dated 15-03-2018]
3.	Refund on account of export of electricity	A statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit.
4.	Refund on account of export of services	A statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates
5.	Refund on account of supply of goods made to a Special Economic Zone	A statement containing the number and date of invoices as provided in rule 46

	unit or a Special Economic Zone developer	along with the evidence regarding the endorsement by the specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005. A declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer
6.	Refund on account of supply of Service made to a Special Economic Zone unit or a Special Economic Zone developer	A statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer A declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer
7.	Refund on account of deemed exports (where refund is claimed by the Supplier)	A statement containing the number and date of invoices along with the following documents notified under *Notification No. 49/2017 – Central Tax dated 18th October,*

<table>
<tr><td></td><td></td><td>2017:
(a) Proof of receipt of Goods by the Eligible Recipient:<table><tr><th>In case of Supply to</th><th>Document required</th></tr><tr><td>Advance Authorisation Holder or EPCG Holder</td><td>Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder,</td></tr><tr><td>EOUs</td><td>Copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it</td></tr></table>(b) Undertaking from the Recipient of the Deemed Export that the Recipient has not taken Input Tax Credit of the GST paid by the Supplier
(c) Undertaking from the Recipient of the Deemed Export that they shall not claim the refund of the GST paid by the Supplier.</td></tr>
<tr><td>8.</td><td>Refund on account of deemed exports (where refund is claimed by the Recipient of Deemed Exports)</td><td>A statement containing the number and date of invoices along with further documents as may be notified.
However, no document has been notified by the Government when the Recipient is claiming the Refund.
It may be prudent for the Recipient to</td></tr>
</table>

		obtain an undertaking from the Supplier that Supplier has not claimed refund of the GST paid on the Deemed Exports
9.	Refund on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies	A statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54.
10.	Refund arises on account of the finalisation of provisional assessment	The reference number of the final assessment order and a copy of the said order
11.	Refund as per Section 77 (tax wrongly collected and paid to Central or state government)	A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply.
12.	Refund on account of excess payment of tax	A statement showing the details of the amount of claim on account of excess payment of tax.
13.	Refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;	A statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof. A certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices

		against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices.
14.	Refund claimed does not exceed two lakh rupees (tax paid but the incidence has not been passed on to the other person)	A declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.
15.	Refund claimed exceed two lakh rupees (tax paid but the incidence has not been passed on to the other person)	A Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.

Self-Declaration or CA Certificate for non-passing of incidence of tax, interest or any other amount is **not required** in following cases:

1. Refund of tax paid on account of export of goods or services or both or on inputs or input services used in making such exports
2. Refund of unutilized ITC for export of goods or inverted duty rate structure.
3. Refund of tax paid on a supply which has not been provided either wholly or partially and for which invoice has not been issued or refund voucher has been issued
4. Refund of CGST and SGST HELD to be IGST or vice versa
5. Refund of Tax or Interest borne by notified applicants.
6. Refund is claimed by an unregistered person who has borne the incidence of tax.

Circular No. 166/22/2021-GST dt. 17th Nov, 2021

Q. Whether certification/ declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?

A. No, furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.

54.5 Refund Amount to be debited to Electronic Credit Ledger

As per rule 89(3), where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

As per Circular *125/44/2019-GST dated 18.11.2019* [Guidelines for refunds of unutilized Input Tax Credit], the amount to be debited to electronic credit ledger is least of the following:

(a) Amount calculated as per rule 89(4) or 89(5)

(b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and

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

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

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

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

The procedure described above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications filed after the date of issue of this Circular. However, for applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant, no adverse view may be taken by the tax authorities. The above system validations are being clarified so that there is no ambiguity in relation to the process through which an application in FORM GST RFD-01 is generated. Further, it may be noted that the refund application can be filed only after the electronic credit ledger has been debited in the manner specified above, and the ARN is generated on the common portal.

54.6 Formula for computation of refund

Refund options and limitations:

Inward Supplies					Outward Supplies					Rule reference
Description	GST paid on Inward Supplies				Zero-rated supply (without payment of IGST)			Inverted Rate on Outward Supplies (of goods or services)	Zero-rated supply (with payment of IGST)	
	48/2017-CT	40/2017-CT(R) & 41/2017-Int.(R)	78/2017-Cus. & 79/2017-Cus.	No benefit availed (full tax paid)	Exports		SEZ			
					Goods	Services				
Capital goods	×	×	×	✓	×	×	×	×	✓	96(10)
Inputs	×	×	×	✓	✓	✓	✓	×	✓	89(4)
Input Services	×	×	×	✓	✓	✓	✓	×	✓	
Inputs	×	×	×	✓	✓	✓	✓	×	×	89(4A)
Input Services	×	×	×	✓	✓	✓	✓	×	×	
Inputs	×	✓	✓	✓	✓	×	×	×	×	89(4B)
Input Services	×	×	×	✓	✓	×	×	×	×	
Inputs	✓	×	×	✓	×	×	×	✓	×	89(5)

Computation of Refund of Unutilized ITC on Export

As provided in rule 89(4) & rule 89(5) of the CGST Act is as under:

(a) In the case of zero-rated supply of goods or services or both **without payment of tax under bond or letter of undertaking**, refund of input tax credit shall be granted as per the following formula -

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

(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 **other than** the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

Note: ITC on capital goods shall not qualify as Net ITC.(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both"

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

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

(E) "Adjusted Total Turnover" means the sum total of the value of-

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

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

excluding-

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

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

during the relevant period

Note: Turnover of zero-rated supply of services on which tax has been paid has been excluded from the definition of adjusted turnover by Notification 39/2018-Central Tax dated 04-09-2018. Zero rated supply of service without payment of tax and non-zero rated supply of service, however, shall form part of adjusted turnover.

(F) "Relevant period" means the period for which the claim has been filed

Explanation.–For the purposes of this sub-rule, the value of goods exported out of India shall be the lower of the following:

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

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

Calculation of Adjusted Total Turnover – Clarification by *Circular No. 147/2021 dated 12th March 2021*

It has been clarified that for the purpose of Rule 89(4), the value of export/ zero-rated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule. The same has been explained by the following illustration where actual value per unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier:

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

Net admissible ITC = Rs. 270

All values in Rs.

Outward Supply	Value per unit	No of units supplied	Turnover	Turnover as per amended definition
Local (Quantity 5)	200	5	1000	1000
Export (Quantity 5)	350	5	1750	1500 (1.5*5*200)
Total			**2750**	**2500**

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

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

Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500

Adjusted Total Turnover= Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750]

Net ITC = Rs. 270

Refund Amount = Rs. $\frac{1500*270}{2500}$ = Rs. 162

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

Manner of calculation of Adjusted Total Turnover under sub-rule (4) of rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of rule 89 vide *Notification No. 14/2022- CT dated 05.07.2022. [Circular No. 197/09/2023- GST dated 17th July 2023]*

Clarification on whether the value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule.

- In this regard, it is mentioned that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide *Notification No. 16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021* was issued which *inter alia* clarified that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of rule 89.
- On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide *Notification No. 14/2022- CT dated 05.07.2022*, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.
- Therefore, the value of zero rated/ export supply of goods exported out of India, calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of rule 89.

Computation of Refund in case of Inverted Duty Structure

(b) In the case of refund on account of **inverted duty structure**, refund shall be granted as per the following formula –

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}

(a) Net ITC shall mean input tax credit availed **on inputs** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) Adjusted Total turnover and relevant period shall have the same meaning as assigned to it in sub-rule (4).

Note: In terms of *Notification No. 21/2018 – Central Tax dated 18th April 2018*,

(i) Maximum refund amount to be computed after taking into consideration the ITC availed on inputs only. No refund shall be allowed on inputs services in case of refunds under inverted duty rate. Before amendment by Notification 21/2018, the definition of Net ITC as applicable under Rule 89(4) was applicable to inverted duty rated refunds, which included ITC on inputs as well as input services.

But Input services related ITC is considered as part of the formula under rule 89 (5) from July 2022. It is considered for arriving at the proportion which determines the amount of tax on Inverted duty attracting outward supplies.

(ii) Further, Refund shall be allowed on turnover of goods as well as services. Before amendment by Notification 21/2018, the formula provided for refund in respect of turnover of inverted duty rated goods only.

Notification No. 26/2018 dated 13-06-2018, further reiterated the above amendments in formula for inverted duty rated refunds and also made it applicable retrospectively w.e.f. 01-07-2017.

Note: *Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017* (as modified by 29/2017-Central Tax(Rate) dated 22-09-2017 and 44/2017-Central Tax (Rate) dated 14-11-2017) specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. It includes fabrics items and items related to railways. However, in case of fabric processors (Job worker), the output supply is the supply of job work services and not of goods (fabrics). Hence, in terms of *Circular No 48/22/2018*, it is clarified that the fabric processors (Job Worker) shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.

Note: *Notification 20/2018-Central Tax (Rate) dated 26-07-2018*, has further amended notification 5/2017-Central Tax (Rate) dated 28-06-2017 to provide that nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of fabrics. The notification further provides that the accumulated input tax credit lying unutilized in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received up

to the 31st day of July 2018, shall lapse. *Circular 56/30/2018 dated 24-08-2018* has been issued to clarify the doubts relating to lapse of input tax credit accumulated on account of inverted duty structure on fabrics for the period up to 31-07-2018.As per circular for calculation of input tax credit to lapse on 31-07-2018, amount calculated for 01-07-2017 to 31-07-2018, as per formula provided in Rule 89(5) shall be lapsed subject to modifications that ITC in respect of inputs in stock on 31-07-2018 shall be excluded from calculation of net ITC. Calculation of value of inputs shall be made as per format provided in Table 7 of ITC-01. ITC on input services and capital goods shall also not lapse. The amount of credit to lapse shall also not impact the amount of credit refundable of zero-rated supplies under rule 89(4). The amount of credit to lapse shall be provided in column 4B(2) of GSTR-3B return for August 2018. Verification of amount to lapse shall be done at the time of filing first refund on account of inverted duty rated refund on fabric. A detailed calculation sheet shall be prepared by the taxable person and furnished at the time of filing of first refund claim on account of inverted duty structure.

Note: Notification 15/2017 dated 28-6-17 has specified that construction of complex, building, civil structure service where the entire consideration has not been received after issuance of completion certificate as service on which refund not to be allowed under inverted duty rate.

(c) In the case of zero-rated supply of goods or services or both on **payment of IGST tax**, refund of entire amount of IGST shall be available (refer para 54.7)

(d) In the case of supplies received on which the supplier has availed the benefit of Notification No. 48/2017-Central Tax dated the 18th October, 2017 (deemed exports), refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted (Rule 89(4A))

(e) In the case of supplies received on which the supplier of the person claiming refund of unutilized ITC on account of zero rated supplies without payment of tax has availed the benefit of Notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017 (concessional rate of tax at 0.05% on intra-State supply of taxable goods by a registered supplier to a registered recipient for export) or Notification No. 41/2017 Integrated Tax (Rate) dated the 23rd October, 2017 (concessional rate of tax at 0.1% on inter-State supply of taxable goods by a registered supplier to a registered recipient for export) **OR** person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax himself has availed the benefit of Notification No. 78/2017-Customs dated the 13th October, 2017 (goods imported by EOUs) or Notification No. 79/2017-Customs dated the 13th October, 2017 (import of goods under Advanced authorization/EPCG schemes) , refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted (Rule 89(4B))

Further a clarification has been provided vide *Circular No. 172/04/2022-GST dated 06.07.2022* in respect of "whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017*".*

(f) It has been clarified that ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

CBIC clarified vide ***Circular No. 181/13/2022 dated 10.11.2022*** on the date of applicability of the notifications pertaining to refund in case of inverted duty structure:

(a) ***Notification No. 14/2022-CT dt. 05.07.2022*** has been issued to amend the formula related to calculation of refund of unutilised input tax credit in case of inverted duty structure prescribed under rule 89(5) of the CGST Rules, 2017. In order to clarify the date of its applicability, the circular has been issued to reiterate that the new formula shall be applicable only in case of refund applications filed on or after 05.07.2022. Therefore, the refund applications filed before 05.07.2022 shall be dealt as per the formula as it existed before the amendment made vide above notification.

(b) ***Notification No. 9/2022-CT (R) dt. 13.07.2022*** has been issued to place restriction on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods. The Circular has clarified that restriction imposed by the above notification shall apply prospectively. Hence, restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after 18.07.2022 and would not apply to the refund applications filed before 18.07.2022.

54.7 Rule 96 provides for Refund of integrated tax paid on goods or services exported out of India

It is interesting to note that although Rule 96 reads "Refund of integrated tax paid on goods or services exported out of India", refund of integrated tax paid on the services exported out of India shall be dealt with in accordance with the provisions of rule 89 and the application for refund shall be filed in FORM GST RFD-01. [Rule 96(9)]

Shipping Bill deemed to be application

The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India.

When refund application deemed to have been filed

Such application shall be deemed to have been filed only when: -

- the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; **and**
- the applicant has furnished a valid return in FORM GSTR- 3B

  If there is any mismatch between the data furnished in Shipping Bill and in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;
- The applicant of refund has undergone Aadhaar authentication as per rule 10B

Note: Filing of export manifest is must for treating shipping bill or bill of export as refund claim. Export report is filed in case of export by land and Export manifest is filed in case of export by air or sea. Export manifest is required to be filed u/s 41 and 42 of Customs Act before departure of conveyance carrying goods. Commissioners have to ensure that export report/EGM is filed in prescribed time limits *[Instruction No. 15/2017-Customs dated 09-10-17]*

Transmission of export data to Customs designated portal

The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India. Details of export invoices are available at ICEGATE portal.

Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended, then in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the details of information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Note that Table 6A has to be furnished only after filing of Form GSTR-3B under the respective tax period.

Cautions to ensure transmission of Data to Customs designated Portal:

Data Matching

To ensure that the GST System transmits the export invoice data, in case of export of goods with payment of IGST, to ICEGATE for refund, Exporters need to provide Complete and Correct Data while filing Table 6A of GSTR-1 as under:

- Invoice No. and Date (Tax invoice and not commercial invoice).

- Select from drop down list (WPAY- with payment of tax/WOPAY-without payment of tax).
- Shipping Bill No. & Date.
- While using offline tool for GSTR 1, the date format is dd-mmm-yyyy e.g. 15th July 2017 will be written as 15-Jul-2017 and not like 15/07/2017.
- Six Digit Port Code should be mentioned correctly.
- Invoice Value: It is the total value of export goods covered by the invoice including of tax and other charges, if any.
- Taxable Value: It is the value of goods, on which tax is paid. (Value net of tax).
- Tax Paid IGST, only in case, where the export is done on payment of IGST.

Value Differences

Where the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund. *[Para 9, 9.1 of Circular 37/11/2018 dated 15-03-2018]*

IGST Paid Differences GSTR-1 and 3B

It is one of validation check by GSTIN that aggregate IGST paid amount claimed in Table 6A of GSTR-1 is not higher that IGST paid amount indicated in Table under column 3.1(b) of GSTR-3B of corresponding month. To ensure that the GST System transmits the export invoice data, in case of export of goods with payment of IGST, to ICEGATE for refund, Exporters should make payment of Tax and File Return as under:

i) File Form GSTR-3B of corresponding period.

ii) In case of export of goods, the IGST amount paid should be shown through Table 3.1(b) of GSTR-3B and amount must be equal to or greater than the total IGST amount shown in Table 6A, and Table 6B, of GSTR-1 for the corresponding tax period.

As return in **FORM GSTR-3B** do not contain provisions for reporting of differential figures for past month(s), the said figures may be reported on net basis along with the values for current month itself in appropriate tables i.e., Table No. 3.1, 3.2, 4 and 5, as the case may be. It may be noted that while making adjustment in the output tax liability or input tax credit, there can be no negative entries in the FORM GSTR-3B. The amount remaining for adjustment, if any, may be adjusted in the return(s) in FORM GSTR3B of subsequent month(s) and, in cases

where such adjustment is not feasible, refund may be claimed. Where adjustments have been made in FORM GSTR-3B of multiple months, corresponding adjustments in FORM GSTR-1 should also preferably be made in the corresponding months. *[Para 4 of Circular 26/26/2017 dated 29-12-17]*

Auto Drafting of GSTR-1

As and when the Form auto-drafted in FORM GSTR-1 are furnished for the said tax period, then details of exports will be auto-drafted from Table 6A referred above. The procedure is as follows:

(a) File GSTR-3B for a Tax Period

(b) Fill Table 6A of Form GSTR-1 available on the Common Portal. Refund will be processed based on this Table 6A

(c) As and when Form GSTR-1 is filed, the data relating to exports will be auto-populated from the above Table 6A

Processing of IGST Refund Claim

Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3B, as the case may be, from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

As per *Instruction No.15/2017-Customs dated 9-10-17*, the amount of refund of IGST paid on export of goods shall be credited to the account of exporter registered with Customs even if it is different from bank account mentioned in registration particulars.

Withholding of Refund of integrated tax paid on exports

1. The claim for refund shall be withheld where, -

    a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

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

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

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

3. Where refund is withheld in accordance with the provisions of point (b) above and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

4. The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of point (2) and (3) above shall be dealt in accordance with the provisions of rule 89.

CBIC has issued instruction specifying the manner of processing and sanction of IGST refunds, withheld in terms of clause (c) of sub-rule (4) of rule 96, transmitted to jurisdictional GST authorities under sub-rule (5A) of rule 96 of the CGST Rules, 2017 vide *Instruction No. 4/2022-GST dated 28-11-2022.*

Refund of IGST to Government of Bhutan in lieu of Exporter

For notified goods, Central government may pay refund to Government of Bhutan instead of exporter. Exporter shall not be allowed any refund of IGST on export of goods to Bhutan.

Restriction on grant of IGST Refund on Exports [Rule 96(10)]

Present rule 96(10) imposing restrictions on grant of refund of IGST on Exports was first introduced as rule 96(9) by *Notification 75/2017 dated 29-12.17* retrospectively from 23-10-17. Then it was re numbered to 96(10) and further amended vide Notification 3/2018 dated 23-01-18 again retrospectively w.e.f. 23-10-17. Then it was re modified vide notification No. 39/2018, dt. 04.09.2018. w.e.f. 23-10-17. Notifications 53/2018 dated 9-10-18 has modified rule 96(10) from 23-10-17 and notification 54/2018 dated 9-10-18 has amended this Rule prospectively w.e.f. 9-10-18. The impact of changes has been explained in *Circular No. 70/44/218-GST dated 26-10-18.*

From 23-10-17 to 8-10-2018

Exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs [Import by EOU] and 79/2017-Customs (import of goods under Advanced authorization/EPCG schemes) [both dated 13th October, 2017 shall be eligible to claim refund of the IGST paid on exports.

However, if the benefit of above notifications has been obtained by the supplier of exporter, then exporter shall not be eligible to claim refund of IGST paid on exports. Further if the supplier of exporter has availed benefit of 40/2017-CTR or 41/2017-CTR [Concessional rate of tax @ 0.05%/0.1% respectively] or 48/2017 [Deemed exports], then also exporter shall not be eligible to claim refund of IGST paid on exports.

From 9-10-2018:

Exporters who are importing goods in terms of Notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13th October, 2017 would not be eligible for refund of IGST paid on exports

However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of *Notification No. 79/2017-Customs dated 13th October, 2017* or through domestic procurement in terms of *Notification No. 48/2017-Central Tax, dated 18th October, 2017*, shall continue to be eligible to claim refund of IGST paid on exports and would not be hit by the restrictions.

Further, if the person claiming the refund of IGST paid on export of goods or services has availed benefit of 40/2017-CTR or 41/2017-CTR [Concessional rate of tax @ 0.05%/0.1% respectively] or 48/2017 [Deemed exports], then also he shall not be eligible to claim refund of IGST paid on exports.

Circular No. 174/06/2022 dated 6th July 2022 has been issued by CBIC prescribing the manner in case the persons to whom refund have been sanctioned erroneously, shall get the ITC paid on exports as credit to electronic credit ledger. Such taxpayers have been advised by the Circular to pay the refund back along with interest and penalty through Form DRC-03 in cash and then the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger. Form GST PMT-03A is the form prescribed for such re-credit.

54.8 Rule 96A provides for Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking

1. Any registered person availing the option to supply goods and/or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in **FORM GST RFD-11** to the jurisdictional Commissioner (vide *Circular no 2/2/2017-GST* the power has been delegated to Deputy/Assistant Commissioner).

2. **Conditions of LUT**

The registered person shall bind himself to pay the tax due along with the interest specified under sub-section (1) of section 50 (18%) within a period of —

(a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange

The Government has clarified & emphasized that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services. (*Circular No. 37/11/2018-GST dated 15th March, 2018*)

3. In the event, goods are not exported within the time specified above and the registered person fails to pay the IGST amount, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.

4. Para 4 of *Circular No. 197/09/2023- GST dated 17th July 2023* clarifies that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it has been clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible. The circular further clarifies that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

5. The export as allowed under bond or Letter of Undertaking withdrawn shall be restored immediately when the registered person pays the amount due.

The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax."

6. **LUT/ Bond not required in case of exempt supplies:** In terms of *Circular No. 45/19/2018 dated 30.05.2018*, it has been clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax, LUT/bond is not required. A registered persons exporting **non-GST goods** shall comply with the requirements prescribed under the erstwhile law (i.e., Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any. Further, the exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

Note: The Government vide *Notification No. 16/2017 – Central Tax dated 07.07.2017* has specified following conditions for a registered person to be eligible for submission of Letter of Undertaking in place of a bond.

(a) a status holder as specified in paragraph 5 of the Foreign Trade Policy ("FTP") 2015-2020; or

(b) who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year.

Further, the registered person has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the erstwhile laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

However, the above requirement has been relaxed with effect from 4th October, 2017**.**

The Government vide *Notification No. 37/2017 – Central Tax dated 04.10.2017* has extended the facility of Letter of Undertaking to all registered tax payers.

However, the following persons shall not be eligible to furnish LUT:

1) A registered person prosecuted for any offence under GST or any erstwhile laws in force with tax evaded exceeding Rs.2.5 crores

2) Registered person who fails to pay tax due along with interest within:
   - 15 days after the expiry of 3 months from the date of issue of the invoice for export, if the goods are not exported out of India; or
   - 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

   However, the disqualification in respect of point 2 above will cease on payment of tax along with interest.

A self-declaration by the exporter that he has not been prosecuted is sufficient for the purposes of Notification No. 37/2017- Central Tax dated 4th October, 2017. Department may verify the claim after acceptance of the LUT, unless Department has any specific information otherwise, regarding the prosecution. (*Circular No. 8/8/2017-GST dated 04.10.2017*)

Bond

A registered person who is not eligible to furnish LUT for reasons discussed above, shall execute a Bond. The Bond shall be accompanied by Bank Guarantee for 15% of the Bond amount. Bond shall be furnished on non-judicial stamp paper of the value as applicable in the state in which the bond is being furnished. The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

(*Circular No. 8/8/2017-GST dated 04.10.2017*).

The LUT facility is also extended to Supplies made to SEZ.

LUT to be submitted on portal

Further, the registered person (exporters) shall fill and submit FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter who's LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per *Notification No. 37/2017-Central Tax*, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT. (*Circular No. 40/14/2018-GST dated 06.04.2018*)

Jurisdictional officer for acceptance of LUT

LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

LUT for supplies to Nepal and Bhutan

Acceptance of LUT for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange. [*Circular 8/8/2017-GST dated 4-10-17*]. Supply of services having place of supply in Nepal or Bhutan against payment in

Indian rupees is exempt under *Notification No. 9/2017-IGST* inserted vide *Notification No. 42/2017-Integrated Tax (Rate), dated 27-10-2017.*

54.9 Refund in case of Deemed Exports

Deemed Exports are defined as "Supplies" as may be notified under section 147 of the CGST Act.

The Central Government vide *Notification No. 48/2017 – Central Tax dated 18.10.2017* has notified the following items as "Deemed Exports":

1. Supply of goods by a registered person against Advance Authorisation
2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation (EPCG)
3. Supply of goods by a registered person to an Export Oriented Unit (EOU) and includes:
   - ✓ Electronic Hardware Technology Park Unit (EHTP) or
   - ✓ Software Technology Park Unit (STP) or
   - ✓ Bio-Technology Park Unit (BTP).
4. Supply of gold by a bank or Public Sector Undertaking specified in the *Notification No. 50/2017-Customs, dated the 30.06.2017* (as amended) against Advance Authorisation.

Analysis

The FTP (2015-2020) has provided a list of Supplies which are Deemed Exports under FTP.

However, only the aforesaid four supplies have been covered under Deemed Export under GST. Therefore, other Deemed Export under FTP but not specified in *Notification No. 48/2017 – Central Tax dated 18.10.2017* shall not be classified as Deemed Exports. The recipient of deemed exports will be eligible to take Input Tax Credit of the tax paid by the supplier subject to restrictions / blocking of credits under sections 16, 17 of the CGST Act and rules thereunder.

It is to be noted that only supply of goods and not supply of services can be classified as Deemed Exports.

Person claiming refund

The Application of refund may be filed by the Recipient of the Goods.

However, the Supplier may also file the refund application if

a) The recipient does not avail the ITC and

b) The supplier furnishes a declaration from the recipient that he has not availed Input Tax Credit on such deemed exports.

Special Procedures with respect to Supply of Goods to EOUs

The Government vide *Circular No. 14/14 /2017 – GST dated 06.11.2017* has issued detailed guidelines on the procedure to be adopted for Supply of goods to EOU, EHTP, STP and BTP (hereinafter collectively referred to as "EOU")

Procedure to be adopted by the EOU:

Steps	Particulars	Form No, if any / Due Date	Explanation
Step 1	Issuance of Prior Intimation	Form-A	The EOU shall give prior intimation of goods to be procured from the Supplier in Form-A. The Intimation must be serially number and must prepared in Triplicate and sent to: (1) the Registered Supplier undertaking the Supply (2) the jurisdictional GST Officer in charge of the Supplier (3) the jurisdictional GST Officer in charge of the EOU
Step 2	Supply of goods by the Supplier		The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP / BTP unit.
Step 3	Endorsement of Invoice by EOU on receipt of goods		On receipt of such supplies, the EOU, shall endorse the tax invoice and send a copy of the endorsed tax invoice to – (1) the Registered Supplier undertaking the Supply (2) the jurisdictional GST Officer in charge of the Supplier. (3) the jurisdictional GST Officer in charge of the EOU. Such endorsement is the Proof of Deemed Export Supplies by a registered person to the EOU
Step 4	EOU shall maintain records for receipt, use	Form-B	EOU shall maintain the record of Receipt, use and Removal of Goods in Form-B

	and removal of Goods		The data is required to be maintained in Digital form. The Record must be updated immediately and accurately and open for Verification by the Proper office
Step 5	Monthly submission of Form-B to the GST Officer	Due date - 10th of the Following month	A digital copy of Form – B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month in a CD or Pen drive, as convenient to the said unit.

Documentary Evidence to be furnished by supplier for claiming refund on account of deemed exports:

A statement containing the number and date of invoices along with the following documents notified under *Notification No. 49/2017 – Central Tax dated 18th October, 2017*:

(a) Proof of receipt of Goods by the Eligible Recipient viz:	
Supply to	Document required
Advance Authorisation Holder or EPCG Holder	Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder,
EOUs	Copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it
(b) Undertaking from the recipient of the Deemed Export that the Recipient has not taken Input Tax Credit of the GST paid by the Supplier	
(c) Undertaking from the recipient of the Deemed Export that they shall not claim the refund of the GST paid by the Supplier.	

Recipient of deemed export supply claiming refund – Availment of Input Tax Credit- *Circular No. 125/2019 dt. 18.11.2019* modified by *Circular No. 147/2021 dated 12th March 2021*

When a refund application is filed by a recipient of deemed export supply, to extent of refund claimed, ITC is debited from the electronic credit ledger. This meant that ITC must be availed by the recipient of deemed export supply to avoid loss of ITC.

Taking this into consideration, para 41 of Circular No. 125/2019 the following amendment has been carried out; "the that he has not availed input tax credit on such invoices." replaced with "the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period."

This amendment removes the restriction on availment of ITC placed by Circular 125/2019 and enables refund application with debit to electronic credit ledger by a recipient of deemed export supply.

Circular No. 166/22/2021-GST dt. 17th Nov, 2021

Q. Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?

A. Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under:

"(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 furnished*;"

On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.

Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

54.10 Rule 90 - Acknowledgement and Deficiency memo

(a) **Acknowledgment where application relates to a claim for refund from the electronic cash ledger-** on receipt of the application for refund, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period of 60 days for passing an order by proper officer shall be counted from such date of filing.

(b) **Acknowledgment where the application for refund, other than claim for refund from electronic cash ledger-** such applications shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application scrutinize the application for its completeness and where the application is found to be complete, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically/manually, clearly indicating the date of filing of the claim for refund and the time period 60 days for passing an order by proper officer shall be counted from such date of filing.

(c) **Deficiency Memo**: Where any deficiencies are noticed, the proper officer shall

communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically/manually, requiring him to file a fresh refund application after rectification of such deficiencies, with 15 days from the date of receipt of application. Hence The older application shall lapse once the deficiency notice is given in RFD-03.

(d) While calculating the 2 year time limit for refund as mentioned in section 54(1), the time period between the date of filing refund claim in FORM GST RFD-01 till the date of communication of deficiencies in FORM GST RFD-03 shall be excluded.

(e) If deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under CGST Act also.

Note: A clarification has been sought whether with respect to a refund claim, deficiency memo can be issued more than once. In this regard rule 90 of the CGST Rules may be referred to, wherein it has been clearly stated that once an applicant has been communicated the deficiencies in respect of a particular application, the applicant shall furnish a fresh refund application after rectification of such deficiencies. It is therefore, clarified that there can be only one deficiency memo for one refund application and once such a memo has been issued, the applicant is required to file a fresh refund application, in **FORM GST RFD-01 online.** It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain uncertified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

Circular No. 125/44/2019-GST dated 18.11.2019 regarding actions to be taken regarding deficiency memo:

(a) Deficiency to be communicated in RFD-03

(b) Amount claimed to be re-credited

(c) Fresh Refund application to be filed within 2 years of the relevant date, as defined in the explanation of section 54.

(d) No Show cause notice to be issued

A refund application which is re-submitted after the issuance of a deficiency memo shall have to be treated as a fresh application. No order in FORM GST RFD-04/06 can be issued in respect of an application against which a deficiency memo has been issued and which has not been resubmitted subsequently.

54.11 Rule 92 provides for order sanctioning refund-

Rule No.	Scenarios	Procedures
92(1)	When entire refund is payable	➢ Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 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 (6) of section 54
92(1A)	Examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export	➢ the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.
92(2)	Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under ➢ the provisions of sub-section (10) [when the applicant is required to pay tax, interest or penalty which has not been stayed by any court] or,	➢ the proper officer shall pass an order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund

	➢ sub-section (11) of section 54 [when any matter of appeal is pending and refund shall affect the revenue	
92(3)	Where the proper officer is satisfied that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant	➢ the proper officer shall issue a notice in FORM GST RFD-08 to the applicant; ➢ the Applicant shall furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and ➢ after considering the reply, the proper officer shall make an order in FORM GST RFD-06 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. ➢ Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.
92(4)	Refund credited to the account of applicant	➢ Where the proper officer is satisfied that the amount is payable to the applicant, he shall make an order in FORM GST RFD-06 then he shall issue a payment advice in FORM GST RFD-05 for refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration and as specified in the application for refund.
92(4A)	Disbursement of Refund	➢ The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (4).
92(5)	Refund credited to Consumer Welfare Fund	➢ Where the proper officer is satisfied that the amount refundable is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue an advice in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund

Note: As per *Notification No. 39/2017-Central Tax* and further modified by *Notification No. 10/2018-Central Tax dated 23-01-2018*, State tax officers have been authorized to act as proper officer for the purpose of section 54 and 55 for the sanction of refund. Regarding refund of IGST paid on exports, State officer have been authorized to deal refund of IGST on export of service but can't deal IGST refund on export of goods. All other types of refunds can be dealt by State tax officer for the purpose of sections 54 & 55 of CGST Act.

Disbursal of Refund Amount

Circular No. 59/2018 dated 4-9-18: A few cases have come to notice where a tax authority, after receiving a sanction order from the counterpart tax authority (Centre or State), has refused to disburse the relevant sanctioned amount calling into question the validity of the sanction order on certain grounds. E.g., a tax officer of one administration has sanctioned, on a provisional basis, 90 per cent of the amount claimed in a refund application for unutilized ITC on account of exports. On receipt of the provisional sanction order, the tax officer of the counterpart administration has observed that the provisional refund of input tax credit has been incorrectly sanctioned for ineligible input tax credit and has therefore, refused to disburse the tax amount pertaining to the same. It is clarified that the remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order and not in withholding of the disbursement of the sanctioned amount. If any discrepancy is noticed by the disbursing authority, the same should be brought to the notice of the counterpart refund sanctioning authority, the concerned counterpart reviewing authority and the nodal officer, but the disbursal of the refund should not be withheld. It is hereby clarified that neither the State nor the Central tax authorities shall refuse to disburse the amount sanctioned by the counterpart tax authority on any grounds whatsoever, except under sub-section (11) of section 54 of the CGST Act. It is further clarified that any adjustment of the amount sanctioned as refund against any outstanding demand against the claimant can be carried out by the refund disbursing authority if not already done by the refund sanctioning authority.

Note: Refer *Notification No. 55/2017–Central Tax dated 15.11.2017*, mentioned above.

However, CBIC vide. *Circular No. 125/44/2019 – GST dated 18.11.2019* in PARA 27 clarified that Separate disbursement of refund amounts under different tax heads by different tax authorities, i.e., disbursement of Central tax, Integrated tax and Compensation Cess by Central tax officers and disbursement of State tax by State tax officers, was causing undue hardship to the refund applicants. In order to facilitate refund applicants on this account, it has now been decided that for a refund application assigned to a Central tax officer, both the sanction order (FORM GST RFD-04/06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT tax officer, both the sanction order (FORM GST RFD04/06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

54.12 Rule 93 provides for the Credit of the amount of rejected refund claim

Where any amount claimed as refund is rejected under rule 92, 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-03. 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. Also, where any deficiencies have been communicated in FORM GST RFD-03, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

Note: Re credit of Electronic Credit Ledger in case of Rejection of Refund claim.

(a) In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the input tax credit under any provisions of the Act and rules made thereunder, the proper officer shall have to issue a show cause notice in FORM GST RFD-08, under section 54 read with section 73 or 74, requiring the applicant to show cause as to why:

   — the refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and

   — the amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

(b) The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in FORM GST RFD-06, under section 54 read with section 73 or section 74 of the Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then FORM GST RFD-06 shall have to be issued accordingly, and the amount of ineligible ITC, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of FORM GST DRC-07.

(c) In any case, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the applicant using FORM GST PMT-03.

(d) Before re crediting, an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection, be obtained. If claimant files appeal, re credit to be done only after the appeal is finally decided against the claimant.

54.13 Issues and Concerns

I. Can a registered person exporting non-taxable goods (say, motor spirit) claim refund of inputs and input services utilised in the manufacture of such non-taxable goods?

Although this is a debatable issue, some experts believe that the law does not place restriction on claiming refund of taxes paid on inward supplies used in effecting such export of non-taxable goods. This could be argued on the following grounds:

- Zero rated supply includes within its ambit, inter alia, export of goods

- Motor spirit, although non-taxable, would fall within the meaning of goods as defined in Section 2(52) of the CGST Act
- Section 17(2) of the CGST Act states that a supplier shall be entitled to avail input tax credit to the extent of input tax as is attributable to taxable supplies including zero rated supplies.
- Section 16(2) of the IGST Act states that input tax credit may be availed for making zero rated supplies notwithstanding the fact that such supply may be an exempt supply subject to restrictions on ITC in Section 17(5).
- Exempt supply has been defined in section 2(47) of the CGST Act to include non-taxable supply.
- Section 54(3) of the CGST Act specifies that refund of unutilised input tax credit shall be allowed in case of zero-rated supplies effected without payment of tax unless such export are subjected to export duty. Thus, refund on export of non-taxable goods may be sought by the registered person.

This position is clarified by CBIC wherein it is stated that as per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. It is also categorically stated that the requirement of Bond/LUT cannot be insisted upon in such cases. (para 49 of the *Circular No. 125/44/2019 GST dated 18.11.2019*)

Can a registered person being an exporter claim refund of unutilised input tax credit being transitional credit carried forward from the pre-GST regime?

Under the GST law, there is no provision specifically providing for refund of transitional credit. Section 54(3) pertains to refund of unutilised input tax credit.

Section 2(63) of the CGST Act defines "input tax credit" to broadly refer to CGST, SGST, UTGST and IGST charged on the supply of goods or services. Thus, it is apparent from the definition that taxes paid under pre-GST regime do not fulfil this criteria to be classified as input tax credit as referred to in section 54(3).

However, Explanation (1) to section 54(14) of the CGST Act defines "refund" to include, inter alia, refund of tax paid on zero-rated supplies. Thus, it is advisable that the exporter opts to export goods or services on payment of tax, utilise such transitional credit for payment of output tax on exports and then apply for refund of the tax paid on exports.

II. Refund in respect of tax paid on capital goods used by an registered person for effecting exports.

It is interesting to note that explanation (1) to section 54(14) of the CGST Act defines "refund" to include, inter alia, inputs and input services used in making zero rated

supplies. On the same lines, "NET ITC" as defined under rule 89(4) of the CGST Rules, refers to merely input tax credit availed on inputs and input services. Thus, conspicuous by its absence is the fact that refund of unutilised input tax credit on account of zero-rated supplies is not available in respect of capital goods.

Such a scenario may be countered by the exporter by choosing to export on payment of tax. As was the case in (II) above, the exporter who opts to export goods or services on payment of tax can utilise input tax credit accumulated on capital goods towards payment of output tax on exports and subsequently apply for refund of taxes paid on exports.

From the above scenarios, it is interesting to note that a registered person should wisely exercise his option to either effect zero-rated supplies on payment of tax or without payment of tax based on the facts of the case and there can be no general rule that can be applied to one and all.

III. Determination of Authorised Operations in respect of supplies made to a SEZ developer or SEZ unit.

The first proviso to rule 89(1) states that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the supplier of goods or services can apply for refund if such supplies are being used for authorised operations. The question which arises is, who determines the authorised operations and who is the specified officer referred to in the said rule.

'Authorised Operations' has been defined under section 2(c) of the SEZ Act to mean:

- For a SEZ Developer – The Board of Approval may authorise the Developer such operations which the Central Government may authorise
- For a SEZ Unit – Operations as authorised by the Development Commissioner in the Letter of Approval.

For the purposes of this sub-rule, – "specified officer" means a "specified officer" or an "authorised officer" as defined under rule 2 of the Special Economic Zone Rules, 2006.

'Specified officer' has been defined in the SEZ Rules to mean a Joint or Deputy or Assistant Commissioner of Customs for the time being posted in the SEZ.

Thus, the terms as defined above, may be adopted for the purpose of rule 89 of the GST Rules.

54.16. Few Clarifications

I. Certain registered person had to reverse the credits to be lapsed (as per Notification No..20/2018-CTR dated 26.07.2018) while claiming accumulated ITC on account of Inverted tax Structure, and they were not able to claim refund to the permissible extent because of validation check on the common portal.

Government noticed that this issue faced by large no. of taxpayers & accordingly issued a *Circular 94/13/2019-GST dated 28.03.2019* stating possible solutions, situations & procedures for the same.

II. Process of claiming of Refund by a merchant Exporter where he had received supplies from suppliers who had availed benefit of *Notification No. 40/2017 CTR dated 23.10.2017*.

Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be granted.

This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall be applied under the category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of tax" in FORM GST RFD-01 and shall be accompanied by all supporting documents required for substantiating the refund claim under the category "refund of unutilized ITC on account of exports without payment of tax". After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05.

III. *[Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange.

It has been recognized that international airports, house retail shops of two types – "Duty Free Shops" (hereinafter referred to as "DFS") which are point of sale for goods sourced from a warehoused licensed under section 58A of the Customs Act, 1962 (hereinafter referred to as the "Customs Act") and duty paid indigenous goods and "Duty Paid Shops" (hereinafter referred to as "DPS") retailing duty paid indigenous goods.

The sale of indigenous goods procured from domestic market by retail outlets to an eligible passenger is a "supply" under GST law and is subject to levy of Integrated tax but the same has been exempted vide notification No. 11/2019-Integrated Tax (Rate) and 01/2019-Compensation Cess (Rate) both dated 29.06.2019. Therefore, retail outlets will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund as per procedure explained in succeeding paragraphs [*Circular No. 106/25/2019-GST dated 29-06-2019*].]

*However, rule 95A which deals with refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist, has been omitted vide Notification No. 14/2022-CT dated 05.07.2022, w.e.f. 01.07.2019, accordingly *Circular No. 106/25/2019-GST dated 29.06.2019* has been withdrawn vide *Circular No. 176/08/2022-GST dated 06.07.2022.*

IV. Processing of refund applications in FORM GST RFD-01 submitted by taxpayers wrongly mapped on the common portal.

As per *Circular No. 104/23/2019- GST dated 28-06-2019*, it is clarified that in such cases, where reassignment of refund applications to the correct jurisdictional tax authority is not possible on the common portal, the processing of the refund claim should not be held up and it should be processed by the tax authority to whom the refund application has been electronically transferred by the common portal. After the processing of the refund application is complete, the refund processing authority may inform the common portal about the incorrect mapping with a request to update it suitably on the common portal so that all subsequent refund applications are transferred to the correct jurisdictional tax authority.

V. Disbursement of Refunds by Single Authority.

Refunds issued under section 54 of the CGST Act, 2019 has been amended by inserting sub-section 8A vide section 103 of the Finance (No. 2) Act, 2019 and the amendment has come into force w.e.f. 1st September, 2019.

The effect of the amendment is that the CGST Officer can now sanction and disburse both CGST & SGST. Earlier, the Central Tax officer was allowed to only sanction both CGST & SGST and disburse CGST but not allowed to disburse SGST which was creating unnecessary delay & hurdle in smooth refund.

VI. Mechanism to verify the IGST payments for goods exported out of India in certain cases

The procedure for claiming IGST refunds is fully automated as provided under Instruction 15/2017-Cus dated 09.10.2017. It has come to the notice of the Board that instances of taking of IGST refund using fraudulent ITC claims by some exporters have been observed by various authorities. [*Circular No.16/2019-Customs dated 17.06.2019*]

- DG (Systems) shall work out the suitable criteria to identify risky exporters at the national level and forward the list of said risky exporters to Risk Management Centre for Customs (RMCC) and respective Chief Commissioners of Central Tax. DG (Systems) shall inform the respective Chief Commissioner of Central Tax about the past IGST refunds granted to such risky exporters (along with details of bank accounts in which such refund has been disbursed).
- RMCC shall insert alerts for all such risky exporters and make 100% examination mandatory of export consignments relating to those risky exporters. Also, alert shall be placed to suspend IGST refunds in such cases.

Further on 19.06.2019 a Press Release was issued stating the stats of the exports. The extract is reproduced for reference:

"*The CBIC has recently instructed its Customs and GST formations to verify the correct availment of input tax credit (ITC) by few exporters who are perceived as "risky" on the basis of pre-defined risk parameters. Only 5,106 risky exporters have been identified so far as against about 1.42 lakh total exporters. Thus, the risky exporters are only 3.5% of the total exporters. Further, in the last two days i.e., 17.06.2019 and 18.06.2019 only 1,436 Shipping Bills filed by total 925 exporters have been interdicted. Considering that about 20,000 Shipping Bills are filed by roughly 9,000 exporters on a daily basis, the intervention is negligible. Even for these risky exporters, the exports are allowed immediately. However, the refund would be released after verification of ITC within a maximum of 30 days*."

VII. A registered person who has filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a given period under a particular category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions:

(a) The registered person must have filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a certain period under a particular category; and

(b) No refund claims in FORM GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period.

It may be noted that condition (b) shall apply only for refund claims falling under the following categories:

(ii) Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;

(iii) Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;

(iv) Refund of unutilized ITC on account of accumulation due to inverted tax structure;

In all other cases, registered persons shall be allowed to re-apply even if the condition (b) is not satisfied.

VIII. Any refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount shall be accordingly paid by issuance of order in FORM GST RFD-06 for amount refundable in cash and FORM GST PMT-03 to re-credit the amount attributable to credit as ITC in the electronic credit ledger. (Clarified vide *Circular No.135/05/2020 – GST dt.31.03.2020*)

IX. After the insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant. However, this will not impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc. (Clarified vide *Circular No. 139/09/2020 - GST*).

X. The term "subsequently held" in section 77 of the CGST Act and section 19 of the IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head. Further, the refund under above referred sections can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e., integrated tax paid in respect of subsequently held inter-State supply, or central and state tax in respect of subsequently held intra-State supply, as the case may be. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of *Notification No.35/2021-Central Tax dated 24.09.2021*, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e., from 24.09.2021. (clarified vide *Circular No. 162/18/2021-GST dt. 25.09.2021* which provides detailed clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act)

XI. Rule 95A relating to refund of taxes to the retail outlets established in the departure area of an international airport beyond immigration counters making tax free supply to an outgoing international tourist, has been withdrawn retrospectively w.e.f. 01.07.2019 vide *Notification No. 14/2022-CT dated 05.07.2022*. Owing to this omission, *Circular No. 106/25/2019-GST dated 29.06.2019* has also been withdrawn, wherein certain clarifications were given in relation to rule 95A vide *Circular No. 176/08/2022-GST dated 06.07.2022*.

XII. *Circular No. 175/07/2022-GST dated 6th July 2022* has been issued by CBIC prescribing the manner of filing refund of unutilised ITC on account of export of electricity. Specific documents and process have been detailed in this circular for exporters of electricity.

FTP – Benefits to Exporters

Under the aegis of Foreign Trade (Development and Regulation) Act, 1992, Government earlier used to announce its 'policy statement' for five years. But from 1st April 2023, unlike earlier Foreign Trade Policy (FTP), there is no end date to the new policy. It is comprised of (i) Foreign Trade Policy (ii) Handbook of Procedures and (iii) Industry Trade Classification –

Harmonised System (ITC-HS). All three form one integral policy and implementation plan for the promotion of exports, curtailment of import of undesirable articles and overall regulation of cross-border trade.

Policy does not impose any statutory levies. In order to make exports (earning forex) competitive, it strives to ensure that domestic taxes and duties should not be exported by being loaded in the price of export product (goods or services). With the introduction of GST, *ab initio* exemptions have been done away with for exporters. All duties must be paid and after completion of export, they will be paid back via the zero-rated benefits.

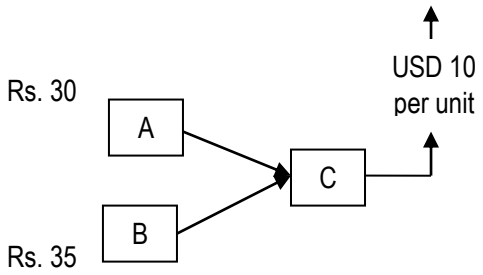
Policy takes this to the next level in the form of:

- Recognizing 'free trade zones' and 'export oriented undertakings' that are export-focussed and enjoy variety for customs duty concessions and procedural relaxations. Customs duty exemption is allowed vide notification 50/2017-Cus. dated 30 Jun 2017 in respect of basic customs duty and IGST under Customs Tariff Act;
- Prescribing 'duty free' procurement license/authorization on pre-export or post-export (for input replenishment) basis;
- Capital goods 'duty free' procurement license with associated export obligation is also allowed';
- Additional incentive in the form of 'tradable' license for service / merchandise exports.

Duty free import license / authorization – illustration of working model

Neutralizing effect of Indian trade taxes / duties is one of the ways of promoting exports without causing price disparity domestically for those products.

The illustration is as follows:



- A and B are used to produce C
- Rs.30 and Rs.35 are the import duties applicable on A and B respectively
- USD 10 is the per unit rate at which C is exported
- Additional data:
  - If duties are paid on A and B, price competitiveness of C is less by Rs.65 per unit of export product

- Exporter has secured an export order for exporting 1 million units of C and has been allowed 4 months to produce and supply. The time permitted under the contract is adequate to procure A and B, produce C and export it to the foreign customer

➢ Instead of paying duties on A and B, the exporter can apply for a license that allows him to (a) import A and B duty free and (b) export C within a certain time period and realize the foreign exchange.

This may be allowed in the form of a pre-export duty free procurement license. This type of license ought to have following further conditions:

- Export order must be a 'firm contract'
- Value of foreign exchange to be earned from exports to be higher than import payments
- Undertaking to be provided that export will be completed within a specified duration
- Undertaking to be provided that export proceeds will be received into India within a specified duration
- Variation in import prices not to adversely affect the overall 'net' forex earnings
- Limit prescribed on the quantity of A and B permitted to be imported duty-free

This kind of pre-export license is essentially the features of an Advance Authorization. This license is issued based on annual export forecast.

Now, if the export order is non-recurring, then the exporter may not desire to import A and B so, he may be permitted to sell the license without any export obligation or sell A and B after importing them. This is the feature of Duty Free Import Authorization scheme which is allowed on post-export basis.

Further, the export order has to be fulfilled immediately and sufficient inventory of C is available with the exporter, then applying and obtaining Advance Authorization may not be possible. For this purpose, a post-export license may be allowed with the following further conditions:

- Input-output ratio is clearly known and notified (Standard Input Output Norms or SION)
- Inventory of C not attached with any export obligations already

This kind of post-export license is a feature of Duty Free Import Authorization scheme. Key aspects of these licenses are:

Criteria	**Advance Authorization**	**Duty Free Import Authorization**
Pre-export	Yes	No
Post-export	No	Yes
Input-output ratio needed	Yes	Yes

Issued to manufacturer-exporter	Yes	Yes
Issued to merchant-exporter	Yes	No
For direct exports	Yes	Yes
For deemed exports	Yes	No
Against actual export orders	No	Yes
Against export projections	Yes	No
Minimum Value Addition condition	Yes (15%)	Yes (20%)
License transferable (post-exports)	No	Yes
Imported goods transferable (post-exports)	No	Yes

Benefits to 'supporting manufacturing' for such license/authorization holders:

Indigenous suppliers of articles required by Duty Exemption license-holders are also allowed the facility to import inputs required to manufacture these import-substitutes. Such indigenous manufacturers do not have any exports. But the Duty Exemption license-holders to whom the supplies are made will export and realize foreign exchange.

Based on this inter-relationship, indigenous suppliers are issued a domestic-sourcing- license by invalidation of inputs from within the SION of the Duty Exemption license-holders as these indigenous suppliers are supplying import-substitutes.

Various forms of this license issued to indigenous suppliers are:

- Advance Authorization or DFIA for intermediate supplies – permits indigenous suppliers to import their inputs on duty free basis to manufacture and supply to actual exporters (holding Duty Exemption license)
- Advance Release Order – permits indigenous suppliers to supply on duty-free basis the import-substitutes to actual exporters (holding Duty Exemption license)
- Back-to-back inland Letter of Credit – permits LCs to be issued by banks based on export contract of actual exporters (holding Duty Exemption license)
- Other key aspects to consider:
    - Advance Release Order (ARO) may be issued along with respective Duty Exemption license or separately.
    - SION and other conditions *mutatis mutandis* apply in respect of Advance Authorization or DFIA for intermediate supplies
    - No foreign exchange earning required
    - Time limit allowed to be co-terminus with actual exporters (holding Duty Exemption license)
- Deemed Exports

Transactions where the goods do not leave the country, payment is received in Indian Rupees or in free foreign exchange and [Supply of goods as specified in Paragraph 7.02 of Foreign Trade Policy, 2023 shall be regarded as "Deemed Exports" provided goods are manufactured in India.] are regarded for limited purposes of FTP to be similar to exports. This is a fiction that cannot be extended beyond the purview of FTP.

Specified supplies are treated as 'deemed' exports and are eligible for certain benefits:

Supply by Manufacturer	Supply by Contractor / Sub-contractor
Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement / DFIA	(i) Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty. (ii) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, for which bids have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad. (iii) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB) accordance with procedures of those Agencies /Funds. (iv) A list of agencies, covered under this paragraph, for deemed export benefits, is given in Appendix 7A.
Supply of goods to EOU / STP / EHTP / BTP	Supply of goods to any project or for any purpose in respect of which the Ministry of Finance by Customs *Notification No. 50/2017-Customs dated 30.6.2017*, as amended from time to time, permits import of such goods at zero basic customs duty subject to conditions mentioned therein. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB. (i) Supply of goods required for setting up of any mega power project, as specified in the list 31 at Sl. No. 598 of Department of Revenue *Notification No. 50/2017-Customs dated* 30.6.2017, as amended from time to time and subject to conditions mentioned therein, shall be eligible for deemed

	export benefits provided such mega power project conforms to the threshold generation capacity specified in the above said Notification. (ii) For mega power projects, ICB condition would not be mandatory if the requisite quantum of power has been tied up through tariff based competitive bidding or if the project has been awarded through tariff based competitive bidding.
Supply of capital goods against EPCG Authorisation	Supply of goods to United Nations or International organization for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India in pursuance of Section 3 of United Nations (Privileges and Immunities Act), 1947. List of such organization and conditions applicable to such supplies is given in the *Customs Notification No. 84/97-Customs dated 11.11.1997*, as amended from time to time. A list of Agencies, covered under this paragraph, is given in Appendix-7B.
	Supply of goods to nuclear power projects provided: i) Such goods are required for setting up of any Nuclear Power Project as specified in the list 32 at Sl. No. 602, Customs notification No. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein. ii) The project should have a capacity of 440 MW or more. iii) A certificate to the effect is required to be issued by an officer not below the rank of Joint Secretary to Government of India, in Department of Atomic Energy. iv) Tender is invited through National competitive bidding (NCB) or through ICB.

Benefits available are as follows:

- Advance authorization or DFIA
- Deemed export drawback
- Terminal excise duty refund (on applicable goods).

With the introduction of GST, except for the list of articles that continue to be liable to Central Excise duty, deemed export benefits have been realigned to be in harmony with incentives/duty neutralization measures in GST. Deemed exports as defined in FTP are not exactly same as deemed exports notified under section 147 of CGST Act (refer 48/2017-CT dated 18 October 2017). Pursuant to this notification, various concessions have been allowed, namely:

<table>
<tr><th>Notification</th><th>Nature of GST Concession</th><th>Condition</th></tr>
<tr><td>NN-48/2017-CT (as amended by 1/2019-CT)</td><td>Notifies deemed exports</td><td rowspan="3">Supplier to claim refund due to ‘rate inversion’ in his hands. As no refundable taxes paid by deemed exporter, no refund remains to be availed</td></tr>
<tr><td>NN-40/2017-CT (R)</td><td>Specifies CGST of 0.05% on supply to merchant exporters</td></tr>
<tr><td>NN-41/2017-Int. (R)</td><td>Specifies IGST of 0.1% on supply to merchant exporters</td></tr>
<tr><td>NN-78/2017-Cus.</td><td>Exempts IGST on imports</td><td rowspan="2">No refund since no IGST paid</td></tr>
<tr><td>NN-79/2017-Cus.</td><td>Exempts IGST on imports</td></tr>
</table>

Where the rate of GST has been reduced to 0.05% CGST for supplies by any Supplier where the Recipient and the Supply is included in as a merchant exporter supply under GST. With this measure, the Supplier would be liable to charge 0.1% IGST or 0.05%+0.05% CGST-SGST though much higher rate of tax may have been paid on this Supplier’s inputs. This results in an ‘inverted rate’ situation for the Supplier who is entitled to claim refund under section 54(3) of CGST Act. Please note that this reduced rate of GST paid by the Recipient will be available as credit albeit for the nominal amount paid (refer para 13.2 of *Circular 37/11/2018-GST dated 15 March 2018*).

Capital goods (export promotion) license:

Capital goods required for manufacture of export goods is also eligible to be procured at ‘zero’ duty. Under this scheme, imports of capital goods are permitted at ‘zero’ rate of duty for the manufacture of resultant export product specified in the EPCG Authorization. The export obligation (EO) is the equivalent value of 6 times of the duty saved to be fulfilled in 6 years.

Zero duty EPCG Authorization is valid for 18 months. Imports are permitted with actual user condition attached. Performance monitoring is done closely and periodically to ensure there are no delinquencies which will attract demand of duty foregone with interest and penalty for such delinquency.

The Scheme applies to manufacture-exporters, merchant-exporters with supporting manufacturers attached and service-exporters certified by DGFT as Common Service Provider.

EO can be fulfilled by export of goods / services of license-holder and exports under other duty-free licenses will also be counted towards fulfilment of EO against EPCG license. If more than 75 per cent of EO is fulfilled in half the time permitted, then remaining EO will be condoned. Where there is shortfall in EO fulfilment, up to 5 per cent shortfall can be waived.

EPCG license-holder can source capital goods from indigenous sources and EO will be reduced by 25 per cent. Suppliers to EPCG license-holders will also be entitled to deemed export benefits. ARO will be issued in favour of local supplier.

EOUs converting to DTA unit or SEZs relocating outside the zone may apply for such conversion with EPCG benefit so that no duties need be paid on the WDV of capital goods provided exports are expected to continue after such conversion / relocation.

Other key aspects:

- EPCG license to be registered at single port for import endorsement. Exports can be from any port
- Exports to be against realization in freely convertible foreign exchange
- Names of supporting-manufacturer and merchant-exporter to indicated on export documents
- Proof of export will be admitted based on agreement for export, invoice and GR/equivalent.
- EO may be fulfilled block-wise – 50% within first four years and balance in next two years. Block-wise EO fulfilment entails 2 per cent composition fee on duty relatable to shortfall in each block.
- EO extension will be allowed on payment of 2 per cent composition fee on duty relatable to shortfall.
- Suo moto exit from EPCG allowed on payment of proportionate duty and interest.
- In case of more than one EPCG authorization, clubbing is permitted for ease of monitoring.

Post export EPCG duty credit scrips are also available to exporters who import capital goods on payment of full duty. Incentive being allowed as duty credit (freely transferable) of the basic customs duty paid on the capital goods. EO would be 15 per cent of lesser than under duty-free EPCG license.

Specified Green Technology products are allowed EPCG authorization with 75 per cent of EO.

Incentive scheme for merchandise exports:

Exporters are granted a 'reward' to offset infrastructural inefficiencies and associated costs involved, under two schemes. Nature of this reward is grant of 'duty credit scrip' that may be used for payment of Customs Duty and Central Excise Duty (where applicable) on freely transferable basis. These scrips are not eligible for payment of GST (refer Q7 in FAQs issued by DGFT on GST changes, see link in http://dgftcom.nic.in/exim/2000/DGFT-GST-FAQ.pdf).

Merchandise Exports from India Scheme (MEIS) is a reward computed on the FOB value of exports realized in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in freely convertible foreign currencies, whichever is less, unless otherwise specified and the percentage of this reward is specified in Appendix 3B of FTP 2015-20.

This MEIS scheme has been discontinued from 1st January 2021 and has been replaced with Remission of Duties or Taxes on Export Products (RoDTEP).

Service Exports from India Scheme (SEIS) is a reward computed based on the 'net' free foreign exchange realized and the percentage of this reward is specified in Appendix 3D of FTP 2015-20.

This SEIS scheme has been discontinued from 1st April 2020 without any replacement or corresponding incentive scheme.

RoDTEP has been made effective for exports from 1st January 2021 in respect of those exports where intention to claim the benefit has been manifested on the shipping bills. RoDTEP is a WTO compliant Scheme and follows the global principle that the taxes/duties should not be exported, they should be either exempted or remitted to exporters, to make the goods competitive in the global market.

RoDTEP Scheme's objective is to refund, currently un-refunded:

a. Duties/taxes/levies, at the Central, State and local level, borne on the exported product, including prior stage cumulative indirect taxes on goods and services used in the production of the exported product; and

b. Such indirect Duties/ taxes/levies in respect of distribution of exported product.

The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

Mechanism of issuance of Rebate:

(a) Scheme would be implemented through end-to-end digitalization of issuance of rebate amount in the form of a transferable duty credit/ electronic scrip (e-scrip), which will be maintained in an electronic ledger by the Central Board of Indirect Taxes and Customs (CBIC).

(b) Necessary rules and procedure regarding grant of RoDTEP claim under the scheme and implementation issues including manner of application, time period for application and other matters including export realisation, export documentation, sampling procedures, record keeping etc. would be notified by the CBIC, Department of Revenue on an IT enabled platform with a view to end to end digitalisation.

(c) Necessary provisions for recovery of rebate amount where foreign exchange is not realised, suspension /withholding of RoDTEP in case of frauds and misuse, as well as imposition of penalty will also be built suitably by CBIC.

Scheme to support 'export oriented' undertakings:

Export Oriented Units (EOU) is a scheme introduced more than 30 years ago in Chapter 6 of the FTP issued from time to time under the aegis of the Foreign Trade (Development & Regulation) Act, 1992.

Background discussion on Project Imports and Concessional Procurement Rules will help gain some understanding about the operational method of EOU. In case of an EOU, there is an oversight authority that will review and approve the unit and all its imports-exports. Customs authorities examine compliance with Customs Act in matters associated with imports-exports of such EOUs based on the 'in principle' approval granted by the oversight-authority. Development Commissioner is the oversight-authority for EOUs, Software Technology Parks of India (STTP) is for IT/ITES units and so on.

EOUs are permitted to undertake various kinds of activities including making of gold/silver/platinum jewellery and articles thereof, agriculture including agro-processing, aquaculture, animal husbandry, bio- technology, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granites. EOUs are permitted to procure (import / domestic) goods required for the export product without payment of duties provided minimum foreign exchange earnings from exports is satisfied.

Exemption from duties is allowed *vide notification 52/2003-Cus. dated 31 March 2003*. This notification grants exemption 'subject to conditions' without any requirement of 'warehousing'. EOUs have been delicensed from 13 August 2016 and made liable to 'condition' of safe keeping in the premises. End-use of exempt goods is validated at first by the oversight-authority and any movement or disposal thereafter is with approval by Customs authorities. Finished goods manufactured by EOUs are permitted to be exported outside India, transferred to other EOUs or sold in DTA (units in Domestic Tariff Area). There is no incidence of duty on export and underlying obligation of duty foregone is passed on to a transferee-EOU. But in case of DTA sales, along with payment of GST (Central Excise in case of select goods still liable to CE duty) the finished goods will entail reversal of duties foregone on the inputs used in their manufacture (based on SION).

The products are exported directly from the EOU and there is no duty incidence on the export-product during the entire process from procurement-to-conversion-to-export. This is a highly efficient manner of operations. The only administrative activity is the 'two-tier approach' of approval and documentation – one, from the oversight-authority and two, from Customs.

EOUs are permitted to get some part of their operations sub-contracted through units that are not EOUs themselves or DTA units. Strict control is required to be exercised in documentation of removal from EOU, processing in DTA and return of processed material with wastage.

EOUs permitted to sell their finished product in DTA are monitored based on their overall export earnings position such that it meets the minimum norms for the given industry. Since, EOUs operate under a 'special condition' and not as a 'warehouse', provisions of section 65 do not apply in respect of DTA sales by EOUs, finished goods sold in DTA will be liable to GST along with reversal of exemptions availed.

Capital goods are permitted to be supplied by the customer of the EOU as required for their projects. Capital goods can be sent to sub-contractors also for use in processing materials for the EOU. All goods can be sent out of the EOU for test, repair, calibration, etc., with necessary approval (two-tier approach). And surplus goods (capital goods or raw materials) may be exported to supplier, sold to other EOUs or de-bonded and removed from EOU. Local sale of capital goods as being put to use will be on payment of import duties that were earlier foregone but based on (a) current duty rate as per section 15 and 46 and (b) depreciated value of the goods at specified rates of depreciation.

Warehousing provisions recast in 2016 are:

- Warehouse (Custody and Handling of Goods) Regulations, 2016
- Special Warehouse Licensing Regulations, 2016
- Special Warehouse (Custody and Handling of Goods) Regulations, 2016
- Private Warehouse Licensing Regulations, 2016
- Public Warehouse Licensing Regulations, 2016
- Warehoused Goods (Removal) Regulations, 2016

Duty exemptions to EOUs are as follows:

Duty	Capital Goods	Inputs	Input Services
Basic customs duty	Exempt	Exempt	Exempt
Customs surcharge	Exempt	Exempt	Exempt
Additional customs duty*	Exempt	Exempt	Exempt
IGST and Cess*	Exempt	Exempt	Exempt

** exemption to expire on 1 October, 2018 vide 33/2018-Cus. dated 23rd March, 2018*

In order to 'ease' doing business in India, 44/2016-Cus. dated 26 July 2016 has brought about the following changes:

- Warehousing discontinued
- Duty exemptions continued
- Control through 'condition' monitoring

As a result, EOUs are no longer have the levy 'suspended' but 'deferred'. This is a very significant change that has been brought about in relation to operation of EOUs. *Circular 35/2016-Cus. dated 26 July 2016* explains the nature of this change brought about. With this change, EOUs are now a location within the *terra firma* of India and transactions with EOUs will entail GST.

Industry specific provisions are also in place; for example, Gem/Jewellery units, Service units, etc. Goods procured from DTA are regarded as 'deemed export' under the FTP (not in Customs Act) for those DTA suppliers who will qualify for various duty-neutralisation benefits on their production and supply.

Periodic reporting requirements are involved to monitor imports, extent of duty-free facility availed, exports, foreign exchange earned, employment generated, etc. Any unit found deficit will be closely monitored or mentored out of the EOU scheme.

With permission of the oversight-authority and the customs department, EOUs can close down their operations after accounting and dealing with the goods (capital goods, raw material and finished goods) in the manner permitted.

Note-

1. Applicability of Foreign Trade Policy 2015-2020 and Handbook of Procedures 2015-2020 was extended till 31.03.2023. Foreign Trade Policy, 2023 has been released on 31.03.2023 which became applicable w.e.f. 01.04.2023.
2. Scheme for Rebate of State and Central Taxes and Levies (RoSCTL) notified by the Ministry of Textiles was adopted in foreign trade policy on 29th March, 2019 by inserting sub para (c) in para 4.1.
3. The Hon'ble Finance Minister, in budget speech 2020, proposed a new scheme called "Remission of Duties and Taxes on Exported Products" (RoDTEP).

Objective

- To make Indian exports cost competitive and create a level playing field for exporters in International market;
- To boost better employment opportunities in export oriented manufacturing industries

4. The refund would be claimed as a percentage of the Freight on Board (FOB) value of exports. In other words, benefits under such schemes will be allowed as a 'per cent' of the value of outward supplies.

54.17 FAQs

Q1. Is there a time limit to file refund claim?

Ans. Yes, the refund claim has to be filed within two years from the relevant date.

Q2. Whether there is any provision for condonation of delay in filing refund claim beyond two years from the relevant date (where tax/interest/amount is not paid under protest)?

Ans. No. There is no provision to condone the delay and the refund claim will be rejected without getting into merits of the refund claim.

Q3. Whether there is any procedure to pay tax/interest/amount under protest?

Ans. There is no mechanism or procedure set out in the GST Law. As per the practice prevailing under the erstwhile central indirect tax laws, a letter expressing the fact that the tax/interest/amount is being paid under protest setting out the reason may be sufficient to consider that the payment is made under protest.

Q4. What would be the time limit for sanctioning refund?

Ans. The refund has to be sanctioned within 60 days from the receipt of duly completed application containing all the prescribed information/documents.

Q5. What happens in case the incidence of duty/tax has been passed on by the person claiming the refund?

Ans. The refund claimed and eligible will be credited to Consumer Welfare Fund.

Q6. Is there a minimum amount specified below which no refund can be claimed?

Ans. Yes. The minimum amount of refund payable should be ` 1000/-.

Q7. Whether refund of unutilized credit at the end of tax period can be claimed by supplier who does not have any exports.

Ans. Yes. It is available in cases where the accumulation of credit is for the reason of tax rate on inputs and input services being higher than the rate of tax on outputs other than NIL rated or fully exempted outward supply.

Q8. Whether refund of Kerala Flood Cess can be taken?

Ans. No. Refund of Kerala Flood Cess is not Allowed.

54.18 MCQs

Q1. In case of refund claim on account of export of goods and/or services made by such category of registered taxable persons as may be notified in this behalf, what percent would be granted as refund on a provisional basis?

(a) 70%

(b) 65%

(c) 80%

(d) 90%

Ans. (d) 90%

Q2. What is the relevant date in case of refund on account of excess payment of GST due to mistake or inadvertence?

(a) Date of payment of GST

(b) Last day of the financial year

(c) Date of providing of service

(d) None of the above

Ans. (a) Date of payment of GST

Q3. Refund of accumulated input tax of inputs credit at the end of any tax period is eligible in cases of?

(a) Due to purchase of huge stocks

(b) Credit cannot be used for any reason.

(c) Due to Exports and input tax rate of inputs being higher than output tax rate

(d) Due to Exports only.

Ans. (c) Due to Exports and input tax rate of inputs being higher than output tax rate

Q4. Relevant date for computing time limit to claim refund in case of deemed exports supply of goods is –

(a) Date of filing returns relating to such deemed exports;

(b) Date of goods leaving India;

(c) Date of payment of Tax;

(d) Date of receipt of consideration in Foreign Exchange;

Ans. (a) Date of filing returns relating to such deemed exports

Statutory Provisions

55. Refund in certain cases

The 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, 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 or both received by them.

Extract of the CGST Rules, 2017

95. Refund of tax to certain persons

1) *[85][Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal or otherwise, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11.*

[85] Substituted vide Notf No. 75/2017-CT dated 29-12-2017, for "(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11, prepared on the basis of the statement of the outward supplies furnished by the corresponding suppliers in FORM GSTR-1."

2) An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.

3) The refund of tax paid by the applicant shall be available if-

a) [86][the inward supplies of goods or services or both were received from a registered person against a tax invoice;]

b) name and Goods and Services Tax Identification Number or Unique Identity Number 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.

*[87][**Provided** that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorised representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**.]*

4) The provisions of rule 92 shall, mutatis mutandis, apply 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 this Chapter, such treaty or international agreement shall prevail.

Related Provisions of the Statute

Section or Rule	Description
Section 54	Refund of Tax
Rule 92	Order sanctioning refund

55.1 Introduction

This section deals with refund of taxes paid on notified supplies of goods or services or both received by certain specified agencies notified by the Government on the recommendation of the Council.

55.2 Analysis

This section provides the following–

(i) Government is vested with powers to notify certain agencies on the recommendation of the Council, to be entitled to claim refund.

(ii) The agencies that can be notified are –

(a) any specialized agency of the United Nations Organization or

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[86] Substituted vide Notf No.75/2017-CT dated 29.12.2017. Applicable w.e.f. 01.07.2017 vide Notf No. 26/2018-CT dt. 13.06.2017.

[87] Inserted vide Notf No. 40/2021-CT dated 29.12.2021 w.e.f. 01.04.2021.

(b) any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,

(c) any other person or class of persons as may be specified.

(iii) In addition to the above, Consulate or Embassy of foreign countries would also be eligible for refund.

(iv) The agencies mentioned above would be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them. The refund claim is subject to such conditions and restrictions as may be prescribed,

55.3 Procedure for refund of tax

The Government vide *Circular No. 36/10/2018-GST dated 13.03.2018*, *Circular No. 43/17/2018-GST dated 13.04.2018, Circular No 60/34/2018 dated 04-09-2018 and Circular No. 63/37/2018-GST dated 14-09-2018* has clarified some of the issues to ensure uniformity which are as under:

(a) The FORM GSTR-11 along with FORM GST RFD-10 has to be filed separately for each of those quarters for which refund claim is being filed.

(b) All the entities claiming refund shall submit the duly filled in print out of FORM RFD-10 to the jurisdictional Central Tax Commissionerate. All refund claims shall be processed and sanctioned by respective Central Tax offices. In order to facilitate processing of refund claims of UIN entities, a nodal officer has been designated in each State. Application for refund claim may be submitted before the designated Central Tax nodal officers in the State in which the UIN has been obtained.

(c) The print version of FORM GSTR-11 generated by the system does not have invoice-wise details. Therefore, it is clarified that till the system generated FORM GSTR-11 does not have invoice-level details, UIN agencies are requested to manually furnish a statement containing the details of all the invoices on which refund has been claimed, along with refund application.

(d) The recording of UIN on the invoice is a necessary condition under rule 46 of the CGST Rules, 2017. If suppliers / vendors are not recording the UINs, action may be initiated against them under the provisions of the CGST Act, 2017.

(e) Refunds can be claimed by UIN entities only or those inward supplies which are in accordance with reciprocity letter issued by MEA.

(f) UIN entities should submit hard copies of invoices where UIN is not mentioned. One-time waiver is hereby given from recording the UIN on the invoices issued by the suppliers pertaining to the refund claims filed for the quarters from April, 2018 to March, 2019, subject to the condition that the copies of such invoices which are attested by the authorized representative of the UIN entity shall be submitted to the jurisdictional officer

(g) UIN entities must submit the copy of the 'Prior Permission letter' and mention the same in the covering letter while applying for GST refund on purchase of vehicles.

(h) The eligibility of refund for the personnel and officials posted in the Embassy/Mission/ Consulate shall be determined based on the principle of reciprocity. UIN entities should give declaration as per Notifications No. 13/2017 – Integrated Tax (Rate), 16/2017- Central Tax (Rate) and No. 16/2017 – Union Territory tax (Rate) all dated 28th June, 2017 and corresponding notifications under the respective State Goods and Services Tax Acts.

(i) The CSD are required to apply for refund on a quarterly basis. Till the time the online utility for filing the refund claim is made available on the common portal, the CSD shall apply for refund by filing an application in FORM GST RFD-10A (Annexure-A to this Circular) manually to the jurisdictional tax office. The said form shall be accompanied with the following documents:

  (i) An undertaking stating that the goods on which refund is being claimed have been received by the CSD;

  (ii) A declaration stating that no refund has been claimed earlier against the invoices on which the refund is being claimed;

  (iii) Copies of the valid return filed in FORM GSTR-3B by the CSD for the period covered in the refund claim;

  (iv) Copies of FORM GSTR-2B of the CSD for the period covered in the refund claim along with the attested hard copies of the invoices on which refund is claimed but which are not reflected in FORM GSTR-2B;

  (v) Details of the bank account in which the refund amount is to be credited.

  The procedure for issue of acknowledgment in RFD-02 and deficiency memo in RFD-03 is same as in case of other refunds.

  The amount of sanctioned refund in respect of central tax/integrated tax along with the bank account details of the CSD shall be manually submitted in the PFMS system by the jurisdictional Division's DDO and a signed copy of the sanction order shall be sent to the PAO for release of the said amount.

Checklist for processing UIN refunds

(a) Covering letter for each quarterly refund

(b) Final copy of **FORM GST RFD-10** with Application Reference Number (ARN)

(c) Final copy of **FORM GSTR-11**

(d) Statement of invoices as per Annexure D

(e) Certificate in case of goods that the goods have been used according to Notifications

No. 13/2017 – Integrated Tax (Rate), 16/2017-Central Tax (Rate) and No. 16/2017 – Union Territory tax (Rate) all dated 28th June, 2017 and corresponding notifications under the respective State Goods and Services Tax Acts

(f) Undertaking in case of services that the services have been used according to Notifications No. 13/2017 – Integrated Tax (Rate), 16/2017-Central Tax (Rate) and No. 16/2017 – Union Territory tax (Rate) all dated 28th June, 2017 and corresponding notifications under the respective State Goods and Services Tax Acts

(g) Copy of letter issued by the Protocol Division of the Ministry of External Affairs based on the principle of reciprocity

(h) Photocopies of only those invoices where UIN has not been recorded on the invoices by the supplier.

(i) A cancelled cheque of the bank account as mentioned in **FORM GST RFD-10** (to be submitted with only the first refund claim filed)

Note: In terms of Notification No. 55/2017 – Central Tax dated 15th November 2017, rule 97A has been inserted in the Central Goods and Service Tax Rules, 2017.

In terms of rule 97A, refunds may be permitted to be filed manually and the processing of refund with respect to any notice, reply or order, among others, can also be issued / filed manually.

55.4 FAQs

1. Name the agencies that can be notified to be eligible to claim refund of taxes under Section 55 of the CGST Act?

Ans. 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 and any other person or class of persons as may be specified in this behalf, are the agencies that can be notified.

2. What amount of refund are the agencies specified above entitled to claim under this section?

Ans. The agencies specified above are entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

55.5 MCQ

Q1. Who is empowered to notify the agencies that are entitled to claim refund under this section?

(a) Government on the recommendations of the GST Council

(b) Board

(c) GST Council

(d) None of the above

Ans. (a) Government on the recommendations of the GST Council

Statutory Provisions

56. Interest on delayed refunds

If any tax ordered to be refunded under sub-section (5) of section 54 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 not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund [88][for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed.]:

Provided *that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations 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 till the date of refund.*

Explanation*.-For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).*

Extract of the CGST Rules, 2017

94. Order sanctioning interest on delayed refunds

[89](1) Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a [90][payment order] in FORM GST RFD-05, 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.

[91][(2) The following periods shall not be included in the period of delay under sub-rule (1), namely:-

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[88] Substituted vide The Finance Act, 2023, w.e.f. 01.10.2023, notified by Notf No. 28/2023 CT dt. 31.07.2023, for "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".

[89] Numbered vide Notification No. 38/2023- CT dated 04-08-2023 w.e.f. 01-10-2023.

[90] Substituted vide Notf No. 31/2019 – CT dt. 28.06.2019 with effect from 24.09.2019 as notified by Notf No. 42/2019-CT dated 24.09.2019 for "payment advice".

[91] Inserted vide Notf No. 38/2023- CT dt. 04-08-2023 w.e.f. 01-10-2023.

a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, that the applicant takes to-

i. furnish a reply in FORM GST RFD-09, or

ii. submit additional documents or reply;

and

b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.]

56.1. Introduction

This section provides for payment of interest on delayed refunds beyond the period of sixty days from the date of receipt of application till the date of refund of such tax to avoid delays in sanction or grant of refund.

56.2. Analysis

(i) The section provides that interest is payable if –

- Tax paid becomes refundable under section 54(5) to the applicant; and
- It is not refunded within 60 days from the date of receipt of application for refund of tax under section 54(1)

(ii) Interest is liable to be paid for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed.

(iii) For the above delay, the Government has specified 6% as the rate of interest vide *Notification No.13 /2017 – Central Tax dated 28.06.2017*.

Illustration:

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.08.2017. The department sanctioned the refund on 30.11.2017. In such a case, interest has to be paid for the period from 19.10.2017 to 30.11.2017.

(iv) Explanation to section provides that in cases where the orders of Appellate Authority / Tribunal / Court sanctions refund in an appeal, against the order of refund sanctioning authority, the order of Appellate Authority / Tribunal / Court will be considered as orders passed by refund sanctioning authority. In other words, by virtue of such order, the refund has become due and the interest will then be computed form the date of completion of 60 days from the date of original refund claim made. For all such claims the Government has specified 9% as the rate of interest vide *Notification No.13 /2017 – Central Tax dated 28.06.2017*.

Illustration:

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.08.2017. It was rejected by refund sanctioning authority. On appeal, the Appellate Authority passed the order for refund based on which the department sanctioned the refund on 30.09.2018. In such case, interest has to be paid for the period from 18.10.2017 to 30.09.2018.

(v) **Rule 94 provides for Order sanctioning interest on delayed refunds-** Where any interest is due and payable to the applicant under section 56, the proper officer shall make a payment order in FORM GST RFD-05, specifying the following:

(a) Amount of refund which is delayed,

(b) the period of delay for which interest is payable and

(c) the amount of interest payable,

and such amount of interest shall be electronically credited to any of the bank accounts of the applicant.

Further as per sub-rule (2) of rule 94, any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, the applicant takes to furnish reply in FORM GST RFD-09 or submit additional documents or reply shall not be included in the period of delay.

56.3. FAQs

Q1. Whether interest is payable on delayed sanction of refund of tax only?

Ans. Yes. The provision for payment of interest is only with respect to delayed payment of refund of tax only and not interest or any other amount sanctioned as refund.

Q2. What would be the rate of interest on delay of sanctioning refund?

Ans. The government has specified 6% as the rate of interest for delay in refund and 9% for the delay of refund arising from an order passed by an adjudicating authority or appellate authority or appellate tribunal or court vide *Notification No. 13 /2017 – Central Tax dated June 28, 2017* as amended from time to time.

56.4. MCQs

Q1. Interest u/s 56 is applicable on delayed payment of refunds issued under?

(a) Section 54

(b) Section 44

(c) Section 41

(d) Section 45

Ans. (a) Section 54

Q2. Interest u/s 56 has to be paid for delayed refunds, if the refund is not granted within…….

(a) 90 days

(b) 3 months

(c) 60 days

(d) None of the above

Ans. (c) 60 days

Statutory Provisions

57. Consumer Welfare Fund

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund, —

(a) the amount referred to in sub-section (5) of section 54;

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

(c) such other monies received by it, in such manner as may be prescribed.

Extract of the CGST Rules, 2017

[92]***[97. Consumer Welfare Fund***

1) All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in subsection (2) of section 12C of the Central Excise Act, 1944 (1 of 1944), section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and section 12 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund:

Provided that an amount equivalent to fifty per cent. of the amount of integrated tax determined under sub-section (5) of section 54 of the Central Goods and Services Tax Act, 2017, read with section 20 of the Integrated Goods and Services Tax Act, 2017, shall be deposited in the Fund.

[93][Provided further that an amount equivalent to fifty per cent. of the amount of cess determined under sub-section (5) of section 54 read with section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), shall be deposited in the Fund.]

[92] Substituted vide Notf No. 21/2018-CT dt. 18.04.2018.
[93] Inserted vide Notf No. 26/2018-CT dt. 13.06.2018.

2) *Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.*

3) *Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.*

4) *The Government shall, by an order, constitute a Standing Committee (hereinafter referred to as the 'Committee') with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Fund for welfare of the consumers.*

5) *(a) The Committee shall meet as and when necessary, generally four times in a year;*

(b) the Committee shall meet at such time and place as the Chairman, or in his absence, the Vice-Chairman of the Committee may deem fit;

(c) the meeting of the Committee shall be presided over by the Chairman, or in his absence, by the Vice-Chairman;

(d) the meeting of the Committee shall be called, after giving at least ten days' notice in writing to every member;

(e) the notice of the meeting of the Committee shall specify the place, date and hour of the meeting and shall contain statement of business to be transacted thereat;

(f) no proceeding of the Committee shall be valid, unless it is presided over by the Chairman or Vice-Chairman and attended by a minimum of three other members.

6) *The Committee shall have powers -*

a) to require any applicant to get registered with any authority as the Central Government may specify;

b) to require any applicant to produce before it, or before a duly authorised officer of the Central Government or the State Government, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;

c) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or the State Government, as the case may be;

d) to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;

e) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;

f) to recover any sum due from any applicant in accordance with the provisions of the Act;

g) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;

h) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars

i) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;

j) to identify beneficial and safe sectors, where investments out of Fund may be made, and make recommendations, accordingly;

k) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;

l) to make guidelines for the management, and administration of the Fund

7) The Committee shall not consider an application, unless it has been inquired into, in material details and recommended for consideration accordingly, by the Member Secretary.

[94][7A) The Committee shall make available to the Board 50 per cent. of the amount credited to the Fund each year, for publicity or consumer awareness on Goods and Services Tax, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty-five crore rupees per annum].

8) The Committee shall make recommendations:-

a) for making available grants to any applicant;

b) for investment of the money available in the Fund;

c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication;

d) for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee);

e) [95][****].

Explanation.- For the purposes of this rule,

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[94] Inserted vide Notf No. 49/2019-CT dt. 09.10.2019 w.e.f 01.07.2017.

[95] Omitted "(e) for making available up to 50% of the funds credited to the Fund each year, for publicity/ consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty five crore rupees per annum." vide Notf No. 49/2019-CT dt. 09.10.2019 w.e.f 01.07.2017.

a) 'Act' means the Central Goods and Services Tax Act, 2017 (12 of 2017), or the Central Excise Act, 1944 (1 of 1944) as the case may be;

b) 'applicant' means,

(i) *the Central Government or State Government;*

(ii) *regulatory authorities or autonomous bodies constituted under an Act of Parliament or the Legislature of a State or Union Territory;*

(iii) *any agency or organization engaged in consumer welfare activities for a minimum period of three years, registered under the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force;*

(iv) *village or mandal or samiti or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes;*

(v) *an educational or research institution incorporated by an Act of Parliament or the Legislature of a State or Union Territory in India or other educational institutions established by an Act of Parliament or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) and which has consumers studies as part of its curriculum for a minimum period of three years; and*

(vi) *a complainant as defined under clause (b) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), who applies for reimbursement of legal expenses incurred by him in a case instituted by him in a consumer dispute redressal agency.*

c) 'application' means an application in the form as specified by the Standing Committee from time to time;

d) 'Central Consumer Protection Council' means the Central Consumer Protection Council, established under sub-section (1) of section 4 of the Consumer Protection Act, 1986 (68 of 1986), for promotion and protection of rights of consumers;

e) 'Committee' means the Committee constituted under sub-rule (4);

f) 'consumer' has the same meaning as assigned to it in clause (d) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), and includes consumer of goods on which central tax has been paid;

g) 'duty' means the duty paid under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962);

h) Fund' means the Consumer Welfare Fund established by the Central Government under sub-section (1) of section 12C of the Central Excise Act, 1944 (1 of 1944) and section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017);

i) 'proper officer' means the officer having the power under the Act to make an order that the whole or any part of the central tax is refundable]

Related Provisions of the Statute

Section or Rule	Description
Section 54	Refund of Tax
Section 58	Utilisation of Fund

57.1 Introduction

If the applicant is unable to prove that the incidence was not actually passed on to any other person then the refund amount is credited to the Consumer Welfare Fund.

The overall objective of the Consumer Welfare Fund is to provide financial assistance to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

57.2 Analysis

The following amounts will be credited to the Fund, in such manner as may be prescribed, -

- All amounts of duty/central tax/ integrated tax /Union territory tax/cess
- income from investment along with other monies specified in section 12C(2) of the Central Excise Act, 1944.

However, in case of integrated tax and compensation cess as determined under Section 54(5), an amount equal to fifty percent of such sum shall be deposited in the fund.

In case of any amount that has been credited to the fund that is now ordered or directed to be to be paid to a claimant by the proper officer, appellate authority or court, then, the same shall be paid from the fund.

57.3 Audit of the Accounts of the Fund

Rule 97(3) provides that the accounts of the fund shall be maintained by the Central Government and subject to audit by Comptroller and Auditor General of India.

57.4 Constitution of the Committee

Rule 97 of the CGST Rules provides that the Government shall constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other Members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers. The Committee shall meet as and when necessary, generally four times in a year.

57.5 Meeting of the Committee

Rule 97(5) provides that the committee shall be required to comply with the following with regard to its meetings:

- The committee shall meet as and when necessary, generally four times a year.
- The committee shall meet at such time and place as the Chairman, or in his absence, the Vice Chairman may deem fit.

- The meetings of the Committee shall be précised by the Chairman, or in his absence by the Vice Chairman of the Committee
- A committee meeting shall be called after giving a minimum ten days' notice in writing to every member.
- The notice of the meeting of the Committee is required to specify the place, date and hour of the meeting along with a statement of business to be transacted thereat.
- A meeting shall not be valid, unless it is presided over by the Chairman, or in his absence, the Vice Chairman and attended by a minimum of three other members.

57.6 Powers of the Committee

The Committee shall have the following powers:

- To require any applicant to get registered with any authority as the Central Government may specify;
- to require any applicant to produce before it, or before a duly authorised officer of the Central Government or the State Government, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;
- to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or the State Government, as the case may be;
- to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;
- to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;
- to recover any sum due from any applicant in accordance with the provisions of the Act;
- to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;
- to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;
- to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;
- to identify beneficial and safe sectors, where investments out of Fund may be made, and make recommendations, accordingly;
- to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;
- to make guidelines for the management, and administration of the Fund.

57.7 Utilisation of funds by the Committee

Rule 97 of the CGST Rules also provides that any utilisation of amount from the Consumer Welfare Fund under sub-section (1) of section 58 shall be made by debiting the Consumer Welfare Fund account and crediting the account to which the amount is transferred for utilisation.

The Rule also clearly lays down the manner in which the proceedings of the Committee are to be regulated, the powers that may be exercised and recommendations that may be made by such Committee.

MCQs

Q1. In cases where the application of refund is found to be in order, the refund amount shall be credited to …… Fund.

(a) Investor Protection and Education Fund

(b) Consumer Protection Fund

(c) Consumer Welfare Fund

(d) Refund Claim Fund

Ans. (c) Consumer Welfare Fund

Q2. The overall objective of the Consumer Welfare Fund is

(a) To facilitate a simplified refund mechanism.

(b) to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

(c) To boost the overall growth of the economy

(d) Both (a) and (c)

Ans. (b) to promote and protect the welfare of the consumers and strengthen the consumer movement in the country

Statutory Provisions

58. Utilisation of the Fund

(1) All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

(2) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Related Provisions of the Statute

Section or Rule	Description
Section 54	Refund of Tax
Section 57	Consumer Welfare Fund

58.1 Introduction

The monies credited to the Consumer Welfare Fund are meant to provide financial assistance to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

58.2 Analysis

(i) It should be ensured that the monies credited to the fund shall be utilized to provide assistance to protect the welfare of consumers as per the rules made by the Government.

(ii) The Government shall maintain proper and separate records in relation to the Fund in consultation with the Comptroller and Auditor-General of India.

58.3 FAQ

Q1. How can it be traced whether the amount in the fund is utilised for the welfare of the consumers?

Ans. The Government shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India. From these records, it can be ascertained if the amount in the fund were utilised for the welfare of the consumers.

58.4 MCQ

Q1. Proper and separate account and other relevant records in relation to the Fund in prescribed form in consultation with the Comptroller and Auditor-General of India shall be maintained by .....

(a) the Government

(b) the authority specified by the Government

(c) the assessee who is claiming refund

(d) (a) or (b)

Ans. (d) (a) or (b)

Circular No. 125/44/2019 - GST

CBEC-20/16/04/18-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 18th November, 2019

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All) The Principal Chief Controller of Accounts (CBIC)

Madam/Sir,

Subject: Fully electronic refund process through FORM GST RFD-01 and single disbursement – regarding

After roll out of GST w.e.f. 01.07.2017, on account of the unavailability of electronic refund module on the common portal, a temporary mechanism had to be devised and implemented wherein applicants were required to file the refund application in FORM GST RFD-01A on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of these refund applications, i.e., issuance of acknowledgement of the refund application, issuance of deficiency memo, passing of provisional/final order, payment advice etc. was also being done manually. In order to make the process of submission of the refund application electronic, Circular No. 79/53/2018-GST dated 31.12.2018 was issued wherein it was specified that the refund application in FORM GST RFD-01A, along with all supporting documents, shall be submitted electronically. However, various post submission stages of processing of the refund application continued to be manual.

2. The necessary capabilities for making the refund procedure fully electronic, in which all steps of submission and processing shall be undertaken electronically, have been deployed on the common portal with effect from 26.09.2019. Accordingly, the Circulars issued earlier laying down the guidelines for manual submission and processing of refund claims need to be suitably modified and a fresh set of guidelines needs to be issued for electronic submission and processing of refund claims. With this objective and in order to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby lays down the procedure for electronic submission and processing of refund applications in supersession of earlier Circulars viz. Circular No. 17/17/2017-GST dated 15.11.2017, 24/24/2017-GST dated 21.12.2017, 37/11/2018-GST dated 15.03.2018, 45/19/2018-GST dated 30.05.2018 (including corrigendum dated 18.07.2019), 59/33/2018-GST dated 04.09.2018, 70/44/2018-GST dated 26.10.2018,

79/53/2018-GST dated 31.12.2018 and 94/13/2019-GST dated 28.03.2019. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26.09.2019 and the said applications shall continue to be processed manually as prior to deployment of new system.

Filing of refund applications in FORM GST RFD-01

3. With effect from 26.09.2019, the applications for the following types of refunds shall be filed in FORM GST RFD 01 on the common portal and the same shall be processed electronically:

(a) Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;

(b) Refund of tax paid on export of services with payment of tax;

(c) Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;

(d) Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;

(e) Refund of unutilized ITC on account of accumulation due to inverted tax structure;

(f) Refund to supplier of tax paid on deemed export supplies;

(g) Refund to recipient of tax paid on deemed export supplies;

(h) Refund of excess balance in the electronic cash ledger;

(i) Refund of excess payment of tax;

(j) Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;

(k) Refund on account of assessment/provisional assessment/appeal/any other order;

(l) Refund on account of "any other" ground or reason.

4. The following modalities shall be followed for all refund applications filed in FORM GST RFD-01 on the common portal with effect from 26.09.2019:

(a) FORM GST RFD-01 shall be filled on the common portal by an applicant seeking refund under any of the categories mentioned above. This shall entail filing of statements/declarations/undertakings which are part of FORM GST RFD-01 itself, and also uploading of other documents/invoices which shall be required to be provided by the applicant for processing of the refund claim. A comprehensive list of such documents is provided at Annexure-A and it is clarified that no other document needs to be provided by the applicant at the stage of filing of the refund application. The facility of uploading these other documents/invoices shall

be available on the common portal where four documents, each of maximum 5MB, may be uploaded along with the refund application. Neither the refund application in FORM GST RFD-01 nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.

(b) The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01, and has completed uploading of all the supporting documents/ undertaking/ statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.

(c) As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under sub-rule (2) of rule 90 of the CGST Rules on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date. This will obviate the need for an applicant to visit the jurisdictional tax office for the submission of the refund application and /or any of the supporting documents. Accordingly, the acknowledgement for the complete application **(FORM GST RFD-02)** or deficiency memo **(FORM GST RFD-03)**, as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.

(d) If a refund application is electronically transmitted to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically as soon as possible, but not later than three working days, from the date of generation of the ARN. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction.

(e) It may be noted that the facility to reassign such refund applications is already available with the Commissioner or the officer(s) authorized by him.

5. The refund application in **FORM GST RFD-01** filed by all taxpayers, who have already been assigned to the Centre or the State tax authorities, shall be automatically forwarded by the common portal to the concerned authority. At the same time, there might be some migrated taxpayers, who have remained unassigned so far. The refund application in **FORM GST RFD-01** filed by such unassigned taxpayers shall be forwarded, for processing, by the common portal to the jurisdictional proper officer of the tax authority from which the taxpayer has originally migrated. Such officers will continue to process these applications up to the stage of issuance of final order in **FORM GST RFD-06** and the related payment order in **FORM GST RFD-05** even if the applicant is assigned to the counterpart tax authority while the refund claim is under processing. However, if such an applicant gets assigned to one of the tax authorities after generation of the ARN and a deficiency memo gets issued for the refund application submitted by him, then the re-submitted refund application, after correction of deficiencies, shall be treated as a fresh refund application and shall be forwarded to the

jurisdictional proper officer of the tax authority to which the taxpayer has now been assigned, irrespective of which authority handled the initial refund claim and issued the deficiency memo.

6. Any refund claim for a tax period may be filed only after furnishing all the returns in **FORM GSTR-1** and **FORM GSTR-3B** which were due to be furnished on or before the date on which the refund application is being filed. However, in case of a claim for refund filed by a composition taxpayer, a non-resident taxable person, or an Input Service Distributor (ISD) furnishing of returns in **FORM GSTR-1** and **FORM GSTR-3B** is not required. Instead, the applicant should have furnished returns in **FORM GSTR-4 (along with FORM GST CMP-08), FORM GSTR-5 or FORM GSTR-6,** as the case may be, which were due to be furnished on or before the date on which the refund application is being filed.

7. Since the functionality of furnishing of **FORM GSTR-2** and **FORM GSTR-3** remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim.

8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file **FORM GSTR-1** on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.

(Authors' comment: Please refer note below**).**

Deficiency Memos

9. It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in **FORM GST RFD-02 s**hould be issued within 15 days of the filing of the refund application. The date of generation of ARN for **FORM GST RFD-01** is to be considered as the date of filing of the refund application. Sub-rule (3) of rule 90 of the CGST Rules provides for communication of deficiencies in **FORM GST RFD-03** where deficiencies are noticed within the aforesaid period of 15 days. It is clarified that either an acknowledgement or a deficiency memo should be issued within the aforesaid

period of 15 days starting from the date of generation of ARN. Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application.

10. After a deficiency memo has been issued, the refund application would not be further processed and a fresh application would have to be filed. Any amount of input tax credit/cash debited from electronic credit/ cash ledger would be re-credited automatically once the deficiency memo has been issued. It may be noted that the re-credit would take place automatically and no order in FORM GST PMT-03 is required to be issued. The applicant is required to rectify the deficiencies highlighted in deficiency memo and file fresh refund application electronically in FORM GST RFD-01 again for the same period and this application would have a new and distinct ARN.

11. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

12. It is also clarified that since a refund application filed after correction of deficiency is treated as a fresh refund application, such a rectified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

Provisional Refund

13. Doubts get raised as to whether provisional refund would be given even in those cases where the proper officer prima-facie has sufficient reasons to believe that there are irregularities in the refund application which would result in rejection of whole or part of the refund amount so claimed. It is clarified that in such cases, the proper officer shall refund on a provisional basis ninety percent of the refundable amount of the claim (amount of refund claim less the inadmissible portion of refund so found) in accordance with the provisions of rule 91 of the CGST Rules. Final sanction of refund shall be made in accordance with the provisions of rule 92 of the CGST Rules.

14. It is further clarified that there is no prohibition under the law preventing a proper officer from sanctioning the entire amount within 7 days of the issuance of acknowledgement through issuance of **FORM GST RFD-06,** instead of grant of provisional refund of 90 per cent of the amount claimed through **FORM GST RFD-04.** If the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies and is of the opinion that no further scrutiny is required, the proper officer may issue final order in **FORM GST RFD-06** within 7 days of the issuance of acknowledgement. In such cases, the issuance of a provisional refund order in **FORM GST RFD-04** will not be necessary.

15. Further, there are doubts on the procedure to be followed in situations where the final refund amount to be sanctioned in **FORM GST RFD-06** is less than the amount of refund

sanctioned provisionally through **FORM GST RFD-04.** For example, consider a situation where an applicant files a refund claim of Rs.100/- on account of zero-rated supplies. The proper officer, after prima-facie examination of the application, sanctions Rs. 90 as provisional refund through **FORM GST RFD-04** and the same is electronically credited to his bank account. However, on detailed examination, it appears to the proper officer that only an amount of Rs. 70 is admissible as refund to the applicant. In such cases, the proper officer shall have to issue a show cause notice to the applicant, in **FORM GST RFD-08,** under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

(a) the amount claimed of Rs. 30/- should not be rejected as per the relevant provisions of the law; and

(b) the amount of Rs. 20/- erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

16. The proper officer for adjudicating the above case shall be the same as the proper officer for sanctioning refund under section 54 of the CGST Act. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in **FORM GST RFD-06,** under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then an amount of Rs. 70/- will have to be sanctioned in **FORM GST RFD-06,** and an amount of Rs. 20/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Further, if the application pertains to refund of unutilized/accumulated ITC, then Rs. 30/-, i.e. the amount rejected, shall have to be re-credited to the electronic credit ledger of the applicant through **FORM GST PMT-03.** However, this re-credit shall be done only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same has been finally decided against the applicant. In such cases, it may be noted that **FORM GST RFD-08** and **FORM GST RFD-06**, are to be considered as show cause notice and adjudication order respectively, under both section 54 (for rejection of refund) and section 73/74 of the CGST Act as the case may be (for recovery of erroneous refund).

17. It is further clarified that no adjustment or withholding of refund, as provided under sub-sections (10) and (11) of section 54 of the CGST Act, shall be allowed in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

Scrutiny of Application

18. In case of refund claim on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICEGATE SITE

(www.icegate.gov.in) wherein the officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number and date. It is advised that while processing refund claims, information contained in Table 9 of **FORM GSTR-1** of the relevant tax period as well as that of the subsequent tax periods should also be taken into cognizance, wherever applicable. In this regard, Circular No. 26/26/2017–GST dated 29.12.2017 may be referred, wherein the procedure for rectification of errors made while filing the returns in **FORM GSTR-3B** has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in **FORM GSTR-3B** and **FORM GSTR-1,** the proper officer shall refer to the said Circular and process the refund application accordingly.

19. Detailed guidelines laid down in subsequent paragraphs of this Circular covering various types of refund claims may also be followed while scrutinizing refund claims for completeness and eligibility.

Re-crediting of electronic credit ledger on account of rejection of refund claim

20. In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the input tax credit under any provisions of the CGST Act and rules made thereunder, the proper officer shall have to issue a show cause notice in **FORM GST RFD-08,** under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

(a) the refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and

(b) the amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

21. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in **FORM GST RFD-06**, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be. If the adjudicating authority decides against the applicant in respect of both points (a) and (b) above, then **FORM GST RFD-06** shall have to be issued accordingly, and the amount of ineligible ITC, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07.** Alternatively, the applicant can voluntarily pay this amount, along with interest and penalty, as applicable, before service of the demand notice, and intimate the same to the proper officer in FORM GST DRC-03 in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the CGST Act, as the case may be, read with sub- rule (2) of rule 142 of the CGST Rules. In such cases, the need for serving a demand notice for recovery of ineligible ITC will be obviated. In any case, the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the applicant using **FORM GST PMT-03,** only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

22. In case of rejection of a claim for refund, on account of any reason other than the ineligibility of credit, the process described in **para 20 and 21** above shall be followed with the only difference that there shall be no proceedings for recovery of ineligible ITC under section 73 or section 74, as the case may be.

23. Consider an example where against a refund claim of unutilized/accumulated ITC of Rs.100/-, only Rs.80/- is sanctioned (Rs.15/- is rejected on account of ineligible ITC and Rs.5/- is rejected on account of any other reason). As stated above, a show cause notice, in **FORM GST RFD-08** shall have to be issued to the applicant, requiring him to show cause as to why the refund claim amounting to Rs.20/-should not be rejected under the relevant provisions of the law and why the ineligible ITC of Rs. 15/- should not be recovered under section 73 or section 74, as the case may be, with interest and penalty, if any. If the said notice is decided against the applicant, Rs. 15/-, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of **FORM GST DRC-07**. Further, Rs. 20/- would be re-credited through **FORM GST PMT-03** only after the receipt of an undertaking from the applicant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the applicant.

24. Continuing with the above example, further assume that the applicant files an appeal against this order and the appellate authority decides wholly in the applicant's favour. It is hereby clarified in such a case the petitioner would file a fresh refund claim for the said amount of Rs. 20/- under the option of claiming refund "On Account of Assessment/Provisional Assessment/Appeal/ Any other order".

Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit.

25. It has been represented that while filing the return in **FORM GSTR-3B** for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero-rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of **FORM GSTR-3B** whilst they have shown the correct details in Table 6A or 6B of **FORM GSTR-1** for the relevant tax period and duly discharged their tax liabilities. Such registered persons were earlier unable to file the refund application in **FORM GST RFD-01A** for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricted the refund amount claimed (integrated tax/cess) to the amount of integrated tax/cess mentioned under column 3.1(b) of **FORM GSTR-3B** (zero rated supplies) filed for the corresponding tax period.

26. In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in **FORM**

GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

Disbursal of refunds

27. Separate disbursement of refund amounts under different tax heads by different tax authorities, i.e., disbursement of Central tax, Integrated tax and Compensation Cess by Central tax officers and disbursement of State tax by State tax officers, was causing undue hardship to the refund applicants. In order to facilitate refund applicants on this account, it has now been decided that for a refund application assigned to a Central tax officer, both the sanction order (**FORM GSTRFD-04/06**) and the corresponding payment order (**FORM GST RFD-05**) for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT tax officer, both the sanction order **(FORM GST RFD-04/06)** and the corresponding payment order (**FORM GST RFD-05**) for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

28. The sanctioned refund amounts, as entered in the payment orders issued by the Central and State/UT tax officers, shall be disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India. On filing of a refund application in **FORM GST RFD-01**, the common portal shall generate a master file for the applicant containing the relevant details like name, GSTIN, bank account details etc. This master file shall be shared with PFMS for validation of the bank account details provided by the applicant in the refund application. Once the bank account is validated, PFMS will create a unique assessee code (combination of GSTIN + validated bank account number) for the applicant. This unique assessee code will be used by PFMS for all refund payments made to the applicant in the said bank account. Therefore, in order to avoid repeat validations and generation of multiple unique assessee codes for the same GSTIN, it shall be advisable for the applicants to enter the same bank account details in successive refund applications submitted in **FORM GST RFD-01**. In cases where an applicant wishes to avail the refund in a different bank account, which has not yet been validated, a new unique assessee code (comprising of GSTIN + new bank account) will be generated by PFMS after validation of the said bank account.

29. If the bank account details mentioned by an applicant in the refund application submitted in FORM GST RFD-01 are invalidated, an error message shall be transmitted by PFMS to the common portal electronically and the common portal shall make the error message available to the applicant and the refund officers on their dashboards. On receiving such an error message, an applicant can:

(a) rectify the invalidated bank account details by filing a non-core amendment in **FORM GST REG-14;** or

(b) add a new bank account by filing a non-core amendment in **FORM GST REG-14**

30. The updated bank account details will be reflected in a drop-down menu on the dashboard. From this drop-down menu, the applicant can choose any bank account, including the ones rectified (option (a)) or newly added (option (b)), from the list of bank accounts available in his registration database. The chosen bank account details will again be sent to PFMS for validation. The proper officer will be able to issue the payment order in **FORM GST RFD-05** only after the selected bank account has been validated.

31. By following the above process, validation errors, if any, will generally be corrected before the issuance of payment order in **FORM GST RFD-05.** Therefore, there should generally not be any validation errors after issuance of a payment order in **FORM GST RFD-05**. However, in certain exceptional cases, it is possible that a validation error occurs after issuance of the payment order. In such cases, the said payment order will be invalidated by the common portal and a new payment order will have to be issued by the proper officer after following the rectification process described in **paras 29 and 30** above. The re-issued payment order will have a new reference number and shall contain the newly selected bank account details. However, there will be no change in either the original ARN or the sanction order number or the amount for which the payment order was originally issued.

32. It may be noted that the applicant, at the time of filing of refund application in **FORM GST RFD-01,** can select a bank account only from the list of bank accounts provided by him at the time of registration in **FORM GST REG-01**, or subsequently through filing a non-core amendment in **FORM GST REG-14.** The same account details will be auto-populated in the payment order issued in **FORM GST RFD-05**. Any change in these auto-populated bank account details shall not be allowed unless there is a validation error in relation to the same.

33. The disbursement status of the refund amount would be communicated by PFMS to the common portal. The common portal shall notify the same to the taxpayer by email/SMS. Such details shall also be available on the status tracking facility on the dashboard.

34. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified vide notification No. 13/2017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05** within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

35. The provisions relating to refund provide for partial as well as complete adjustment of refund against any outstanding demand under GST or under any existing law. It is hereby

clarified that both partial or complete adjustment of sanctioned amount of refund against any outstanding demand under GST or under any existing law would be made in **FORM GST RFD-06.** Furthermore, sub-clause (b) of sub-section (6), sub-clause (a) of sub-section (7), sub-clause (a) of sub-section (8) and sub-clause (a) of sub-section (9) of Section 142 of the CGST Act provides for recovery of any tax, interest, fine, penalty or any other amount recoverable under the existing law as an arrear of tax under GST unless such amount is recovered under the existing law. It is hereby clarified that adjustment of refund amount against any outstanding demand under the existing law can be done.

Guidelines for refunds of unutilized Input Tax Credit

36. Applicants of refunds of unutilized ITC, i.e., refunds pertaining to items listed at (a), (c) and (e) in para 3 above, shall have to upload a copy of **FORM GSTR-2A** for the relevant period (or any prior or subsequent period(s) in which the relevant invoices have been auto-populated) for which the refund is claimed. The proper officer shall rely upon **FORM GSTR-2A** as evidence of the accountability of the supply by the corresponding supplier(s) in relation to which the input tax credit has been availed by the applicant. Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B along with the application for refund claim. Such availment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules inserted vide Notification No. 49/2019-CT dated 09.10.2019. The applicant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said format for enabling the proper officer to determine the same. Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure – B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the application in **FORM GST RFD 01**. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A of the relevant period uploaded by the applicant. **(Authors' comment:** Please refer note below**).**

37. In case of refunds pertaining to items listed at (a), (c) and (e) in para 3 above, the common portal calculates the refundable amount as the least of the following amounts:

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

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

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

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

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

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

38. The order of debit described above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications. However, for applications where this order is not adhered to by the applicant, no adverse view may be taken by the tax authorities. The above system validations are being clarified so that there is no ambiguity in relation to the process through which an application in **FORM GST RFD-01** is generated.

39. For all refund applications where refund of unutilized ITC of compensation cess is being claimed, the calculation of the refundable amount of compensation cess shall be done separately and the amount so calculated will be entirely debited from the balance of compensation cess available in the electronic credit ledger.

40. The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax.

Guidelines for refund of tax paid on deemed exports

41. Certain supplies of goods have been notified as deemed exports vide notification No.48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and ~~that he has not availed input tax credit on such invoices~~ [the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period.] *Amended by Circular No. 147/2021*. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of

goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.

Guidelines for claim of refund of Compensation Cess

42. Doubts have been raised whether a registered person is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the zero-rated final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminium products, whereas cess is not levied on aluminium products. In this context, attention is invited to section 16(2) of the Integrated Goods and Services Tax Act, 2017 (hereafter referred to as the "IGST Act") which states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, section 16 of the IGST Act has been mutatis mutandis made applicable to inter-State supplies under the Cess Act vide section 11 (2) of the Cess Act. Thus, it implies that input tax credit of Compensation Cess may be availed for making zero-rated supplies. Further, by virtue of section 54(3) of the CGST Act, the refund of such unutilized ITC shall be available. Accordingly, it is clarified that a registered person making zero rated supply of aluminium products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal. Such registered persons may also make zero-rated supply of aluminium products on payment of Integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of Integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies.

43. As regards the certain issues related to refund of accumulated input tax credit of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking on which clarifications have been sought since GST roll out, the same have been examined and are clarified as below:

a) **Issue:** A registered person uses inputs on which compensation cess is leviable (e.g. coal) to export goods on which there is no levy of compensation cess (e.g. aluminium). For the period July, 2017 to May, 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the Central tax, State tax/Union Territory tax or Integrated tax charged on the invoices for these inputs. This ITC is utilized for payment of Integrated tax on export of goods. Vide Circular No. 45/19/2018-GST dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/LUT without payment of tax. He also decides to avail (through the return in FORM GSTR-3B) the ITC of compensation cess, paid on the inputs used in the months of July,

2017 to May, 2018, in the month of July, 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July, 2018 and include the said accumulated ITC for the month of July, 2018. How should the amount of compensation cess to be refunded be calculated?

Clarification: In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of Central tax/State tax/Union Territory tax/Integrated tax was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. However, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of Integrated tax. This process would be applicable for application(s) for refund of compensation cess (not claimed earlier) in respect of the past period.

b) **Issue:** A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

Clarification: There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

c) **Issue:** A registered person avails ITC of compensation cess (say, of Rs. 100/-) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half i.e. Rs. 50/-) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the FORM GSTR-3B filed for the month as a result of which an amount of Rs. 50/- only is credited in the electronic credit ledger. The reversed amount (Rs. 50/-) is then shown as a 'cost' in the books of accounts of the registered person. However, the registered person declares Rs. 100/- as 'Net ITC' and uses the same in calculating the maximum refund amount which works out to be Rs. 50/- (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the

tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is Rs. 50/- (assuming that no other debits/credits have happened), the common portal will proceed to debit Rs. 50/- from the ledger as the claimed refund amount. The question is whether the proper officer should sanction Rs. 50/- as the refund amount or Rs. 25/- (i.e. half of the ITC availed after adjusting for reversals)?

Clarification: ITC which is reversed cannot be held to have been 'availed' in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero- rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the applicant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in para 37 above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Clarifications on issues related to making zero-rated supplies

44. Export of goods or services can be made without payment of Integrated tax under the provisions of rule 96A of the CGST Rules. Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero rated supplies. A detailed procedure for filing of LUT has been specified vide Circular No. 8/8/2017–GST dated 4.10.2017. It has been brought to the notice of the Board that in some cases, such zero-rated supplies were made before filing the LUT and refund claims for unutilized input tax credit got filed. In this regard, it is emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

45. Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of Integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange. It has been reported that the exporters have been asked to pay Integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasized that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a

period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

46. It is learnt that some field formations are asking for a self-declaration with every refund claim to the effect that the applicant has not been prosecuted. The facility of export under LUT is available to all exporters in terms of *notification No. 37/2017- Central Tax dated 04.10.2017*, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST dated 04.10.2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond. It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self–declaration with every refund claim where the exports have been made under LUT is not warranted.

47. It has also been brought to the notice of the Board that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero-rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are meant for export and the same is done under an invoice issued under rule 46 of the CGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the CGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund.

48. It is clarified that the realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

49. As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. In terms of section 2 (47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of Integrated tax. However, in case of zero-rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of Integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e., Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any. Further, the exporter would be eligible for refund of unutilized input tax credit of Central tax, State tax, Union Territory tax, Integrated tax and compensation cess in such cases.

Refund of transitional credit

50. Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section (3) of section 54 of the CGST Act. These two scenarios are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the CGST Rules, the amount of refund under these scenarios is to be calculated using the formulae given in the said sub-rules. The formulae use the phrase 'Net ITC' and defines the same as "input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both". It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC' and thus no refund of such unutilized transitional credit is admissible.

Restrictions imposed by sub-rule (10) of rule 96 of the CGST Rules

51. Sub-rule (10) of rule 96 of the CGST Rules, restricted exporters from availing the facility of claiming refund of Integrated tax paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations were received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as "EPCG Scheme"), should be allowed to avail the facility of claiming refund of the Integrated tax paid on exports. GST Council, in its 30th meeting held in New Delhi on 28th September, 2018, accorded approval to the proposal of suitably amending the said sub-rule along with sub-rule (4B) of rule 89 of the CGST Rules prospectively in order to enable such exporters to avail the said facility. Notification No. 54/2018 – Central Tax dated the 9th October, 2018 was issued to carry out the changes recommended by the GST Council. In

addition, notification No. 39/2018- Central Tax dated 4th September, 2018 was rescinded vide notification No. 53/2018 – Central Tax dated the 9th October, 2018.

52. The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 – Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 – Central Tax dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13.10. 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the CGST Rules.

Clarification on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure

53. Sub-section (3) of section 54 of the CGST Act provides that refund of any unutilized ITC may be claimed 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). Further, sub- section (59) of section 2 of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted tax structure.54. There have been instances where while processing the refund of unutilized ITC on account of inverted tax structure, some of the tax authorities denied the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

(a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

(b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with the help of following example:

i. Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

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

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

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

v. Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.

vi. From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-.

Refund of TDS/TCS deposited in excess

55. Tax deducted in accordance with the provisions of section 51 of the CGST Act or tax collected in accordance with the provisions of section 52 of the CGST Act is required to be paid while discharging the liability in **FORM GSTR 7** or **FORM GSTR 8,** as the case may be, by the deductor or the collector, as the case may be.

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Q. Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51 /52 of the CGST Act can be refunded as excess balance in cash ledger?

A. The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full

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

Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.

56. It has been reported that, there are instances where taxes so deducted or collected is deposited under the wrong head (e.g. an amount deducted as Central tax is deposited as Integrated tax/State tax), thereby creating excess balance in the cash ledger of the deductor or the collector as the case may be. Doubts have been raised on the fate of this excess balance of TDS/TCS in the cash ledger of the deductor or the collector. It is clarified that such excess balance may be claimed by the tax deductor or the collector as the excess balance in electronic cash ledger. In this case, the common portal would debit the amount so claimed as refund. However, in case where tax deducted or collected in excess is also paid while discharging the liability in **FORM GSTR 7** or **FORM GSTR 8**, as the case may be, and the said amount has been credited to the electronic cash ledger of the deductee, the deductee can adjust the same while discharging his output liability or he can claim refund of the same under the category "refund of excess balance in the electronic cash ledger".

Debit of electronic credit ledger using FORM GST DRC-03

57. Various representations have been received seeking clarifications on certain refund related issues, the solutions to which involve debiting the electronic credit ledger using **FORM GST DRC-03.** These issues are clarified as under:

Sl. No.	Issue	Clarification
1	Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of Notification No. 20/2018-Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period	a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in **FORM GST RFD-01A**. It is emphasized that this application for refund should relate to the same tax period in which such reversal has

Sl. No.	Issue	Clarification
	in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of **FORM GST RFD-01A** from being higher than the amount of ITC availed in **FORM GSTR-3B** of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?	been made. b) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in para 37 above. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through **FORM GST DRC-03.** Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in **FORM GST RFD-05.** c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in **FORM GST RFD-01** under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".

Sl. No.	Issue	Clarification
2	The clarification at Sl. No. 1 above applies to registered persons who have already reversed the ITC required to be lapsed in terms of the said notification through return in FORM GSTR-3B. What about those registered persons who are yet to perform this reversal?	It is hereby clarified that all those registered persons required to make the reversal in terms of the said notification and who have not yet done so, may reverse the said amount through **FORM GST DRC-03** instead of through **FORM GSTR-3B.**
3	What shall be the consequence if any registered person reverses the amount of credit to be lapsed, in terms the said notification, through the return in FORM GSTR-3B for any month subsequent to August, 2018 or through FORM GST DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018?	a) As the registered person has reversed the amount of credit to be lapsed in the return in **FORM GSTR-3B** for a month subsequent to the month of August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018, he shall be liable to pay interest under sub-section (1) of section 50 of the CGST Act on the amount which has been reversed belatedly. Such interest shall be calculated starting from the due date of filing of return in **FORM GSTR-3B** for the month of August, 2018 till the date of reversal of said amount through **FORM GSTR-3B** or through **FORM GST DRC-03**, as the case may be. b) The registered person who has reversed the amount of credit to be lapsed in the return in **FORM GSTR-3B** for any month subsequent to August, 2018 or through **FORM GST DRC-03** subsequent to the due date of filing of the return in **FORM GSTR-3B** for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f. 01.08.2018. However,

Sl. No.	Issue	Clarification
		such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through **FORM GSTR-3B** or **FORM GST DRC-03,** along with payment of interest, as applicable.
4	How should a merchant exporter claim refund of input tax credit availed on supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, Notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or Notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017 (hereinafter referred to as the "said notifications")?	a) Rule 89(4B) of the CGST Rules provides that where the person claiming refund of unutilized input tax credit on account of zero-rated supplies without payment of tax has received supplies on which the supplier has availed the benefit of the said notifications, the refund of input tax credit, availed in respect of such inputs received under the said notifications for export of goods, shall be granted. b) This refund of accumulated ITC under rule 89(4B) of the CGST Rules shall be applied under the category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of tax" in **FORM GST RFD-01** and shall be accompanied by all supporting documents required for substantiating the refund claim under the category "refund of unutilized ITC on account of exports without payment of tax". After scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through **FORM GST DRC-03.** Once the proof of such debit is received by

Sl. No.	Issue	Clarification
		the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05.**

Refund of Integrated Tax paid on Exports

58. The refund of Integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules. The shipping bill filed by an exporter is deemed to be an application for refund in such cases, but the same is deemed to have been filed only when the export manifest or export report is filed and the applicant has filed the return in **FORM GSTR-3B** for the relevant period duly indicating the integrated tax paid on goods exported in Table 3.1(b) of **FORM-GSTR-3B**. In addition, the exporter is expected to furnish the details of the exported goods in Table 6A of **FORM GSTR-1** of the relevant period. Only where the common portal is able to validate the consistency of the details so entered by the applicant, the relevant information regarding the refund claim is forwarded to Customs Systems. Upon receipt of the information from the common portal regarding furnishing of these details, the Customs Systems processes the claim for refund and an amount equal to the Integrated tax paid in respect of such export is electronically credited to the bank account of the applicant.

Clarifications on other issues

59. Notification No. 40/2017 – Central Tax (Rate) and Notification No. 41/2017 – Integrated Tax (Rate) both dated 23.10.2017 provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications. It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate. It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act. It may also be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of Integrated tax.

60. Sub-section (14) of section 54 of the CGST Act provides that no refund under subsection (5) or sub-section (6) of section 54 of the CGST Act shall be paid to an applicant, if the amount is less than one thousand rupees. In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively.

61. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in FORM GSTR-3B for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2018, may be declared in the **FORM GSTR-3B** filed for a subsequent month, say September 2018. This is inevitable in cases where the supplier raises an invoice, say in

August, 2018, and the goods reach the recipient's premises in September, 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the ITC on such goods in the **FORM GSTR-3B** filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

62. It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the applicant. It is clarified that the ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

63. It is requested that suitable trade notices may be issued to publicize the contents of this circular. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner
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Annexure-A

List of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/ Certificates to be filled online	Supporting documents to be additionally uploaded
1	Refund of unutilized ITC on account of exports without payment of tax	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Undertaking in relation to sections 16(2)(c)	Statement of invoices (Annexure-B)
		Statement 3 under rule 89(2)(b) and rule 89(2)(c)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 3A under rule 89(4)	BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods
2	Refund of tax paid on export of services made with payment of tax	Declaration under second and third proviso to section 54(3)	BRC/FIRC /any other document indicating the receipt of sale proceeds of services
		Undertaking in relation to sections 16(2)(c)	Copy of GSTR-2A of the relevant period
		Statement 2 under rule 89(2)(c)	Statement of invoices (Annexure-B)
			Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
			Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
3	Refund of unutilized ITC on account of	Declaration under third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Statement 5 under rule 89(2)(d)	Statement of invoices (Annexure-

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/ Certificates to be filled online	Supporting documents to be additionally uploaded
	Supplies made to SEZ units/developer without payment of tax	and rule 89(2)(e)	B)
		Statement 5A under rule 89(4)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Declaration under rule 89(2)(f)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)
		Undertaking in relation to sections 16(2)(c) Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
4	Refund of tax paid on supplies made to SEZ	Declaration under second and third proviso to section 54(3)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)
	units/developer with payment of tax	Declaration under rule 89(2)(f)	Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
		Statement 4 under rule 89(2)(d) and rule 89(2)(e)	Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
		Undertaking in relation to sections 16(2)(c)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees,	

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/ Certificates to be filled online	Supporting documents to be additionally uploaded
		certification under rule 89(2)(m) otherwise	
5	Refund of ITC unutilized on account of accumulation due to inverted tax structure	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Declaration under section 54(3)(ii)	Statement of invoices (Annexure-B)
		Undertaking in relation to sections 16(2)(c)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 1 under rule 89(5)	
		Statement 1A under rule 89(2)(h)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
6	Refund to supplier of tax paid on deemed export supplies	Statement 5(B) under rule 89(2)(g)	Documents required under Notification No. 49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
7	Refund to recipient of tax paid on deemed	Statement 5(B) under rule 89(2)(g)	Documents required under Circular No. 14/14/2017-GST dated 06.11.2017

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/ Certificates to be filled online	Supporting documents to be additionally uploaded
	export supplies	Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
8	Refund of excess payment of tax	Statement 7 under rule 89(2)(k)	
		Undertaking in relation to sections 16(2)(c)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	
9	Refund of tax paid on intra-state supply which is subsequently held to be an inter-state supply and vice versa	Statement 6 under rule 89(2)(j)	
		Undertaking in relation to sections 16(2)(c)	
10	Refund on account of assessment / provisional assessment / appeal / any other order	Undertaking in relation to sections 16(2)(c)	Reference number of the order and a copy of the Assessment / Provisional Assessment / Appeal / Any Other Order
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	Reference number/proof of payment of pre- deposit made earlier for which refund is being claimed
11	Refund on account of any	Undertaking in relation to sections 16(2)(c)	Documents in support of the claim

Sl. No.	Type of Refund	Declaration/Statement/Undertaking/ Certificates to be filled online	Supporting documents to be additionally uploaded
	other ground or reason	Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Type	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC	Whether invoices included in GSTR-2A Y/N
			Invoice No.	**Date**	**Value**	Inputs/Input Services/capital goods					Yes/No/Partially		
1	2	3	4	5	6	7	8	9	10	11	12	13	14

NOTE:

Circular No. 125/44/2019-GST dated 18.11.2019 has been amended vide Circular No. 134/04/2020-GST dated 23.03.2020, Circular No.135/05/2020 – GST dated 31.03.2020, Circular No. 139/09/2020-GST dated 10.06.2020, Circular No.147/03/2021-GST dated 12.03.2021, Circular No.173/05/2022-GST dated 06.07.2022 and Circular No. 197/09/2023-GST dated 17th July 2023.

1. Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?

Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. The instructions contained in *Circular No. 125/44/2019-GST dt. 18.11.2019* stands modified to this extent.

2. Bunching of refund claims across Financial Years:

Restriction on the clubbing of tax periods across financial years for claiming refund vide Paragraph 8 of the *Circular No. 125/44/2019-GST dated 18.11.2019* has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years.

3. Guidelines for refunds of Input Tax Credit under Section 54(3):

In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

Further, CBIC *vide Circular No. 139/09/2020-GST dated 10-06-2020* clarified that treatment of refund of ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020- GST dated 31-03-2020.

4. New Requirement to mention HSN/SAC in Annexure 'B'

4.1 References have also been received from the field formations that HSN wise details of goods and services are not available in FORM GSTR-2A and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure–B of the circular No. 125/44/2019- GST dated 18.11.2019 so as to easily identify between the supplies of goods and services.

4.2 The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, Annexure-B of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

4.3 A suitably modified statement format is attached for applicants to upload the details of invoices reflecting in their FORM GSTR-2A. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Category of input supplies		Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC
			Invoice No.	**Date**	**Value**	Inputs/Input Services/capital goods	HSN/SAC					Yes/No/Partially	
1	2	3	4	5	6	7	8	9	10	11	12	13	14

5. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate:

Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. Where the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.

However, CBIC vide *Circular No. 173/05/2022-GST dated 6th July, 2022* has clarified that refund of accumulated input tax credit on account of inverted structure as per section 54(3)(ii) of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.

6. Clarification in respect of refund claim by recipient of Deemed Export Supply

Para 41 of *Circular No. 125/44/2019 – GST dated 18/11/2019* has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. It was clarified vide Circular No. 147/03/2021-GST dated 12.03.2021 that there is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply.

7. Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a)

Para 26 of *Circular No. 125/44/2019-GST dated 18th November 2019* gave a clarification in relation to cases where taxpayers had inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table

3.1(b) of FORM GSTR-3Bof the relevant period and were unable to claim refund of the integrated tax paid on the same through FORM GST RFD-01A. This was because of a validation check placed on the common portal which prevented the value of refund of integrated tax/cess in FORM GST RFD-01Afrom being more than the amount of integrated tax/cess declared in table 3.1(b) of FORM GSTR-3B. The said Circular clarified that for the tax periods from 01.07.2017 to 30.06.2019, such registered persons shall be allowed to file the refund application in FORM GST RFD-01Aon the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the tables 3.1(a), 3.1(b) and 3.1(c)of FORM GSTR-3B filed for the corresponding tax period.

It was clarified vide *Circular No. 147/03/2021-GST dated 12.03.2021* to extend the relaxation provided for filing refund claims till 31.03.2021, where the taxpayer inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/ Developer in table 3.1(a) instead of table 3.1(b) of FORM GSTR-3B. Accordingly, para 26 of *Circular No. 125/44/2019-GST dated 18.11.2019* stands modified.

CBIC has specified the procedure relating to sanction, post-audit and review of refund claim vide *Instruction No. 03/2022-GST dated 14.06.2022*. A summary of the same is given below:

As per current practice, all refund orders are required to be reviewed for examination of legality and propriety and for taking a view whether an appeal to the appellate authority under section 107(2) of the CGST Act, 2017 is required to be filed against the said refund order.

Considering the large number of refund claims filed in GST, post-audit may henceforth be conducted only for refund claims amounting to Rs. 1 lakh or more, till further instructions.

All the refund orders passed should be immediately transmitted online to the review module after issuance of refund order in form GST RFD-06. The review and post-audit officers shall have access to all documents/statements on ACES-GST portal pertaining to the said refund claims. A Post-Audit Cell may be created in Commissionerate Headquarters under a Deputy/Assistant Commissioner along with one/two Superintendents and Inspectors as required.

The post-audit should be concluded within 3 months from the date of issue of order in Form RFD-06. The review of refund order shall be completed at least 30 days before the expiry of the time period allowed for filing appeal under section 107(2) of the said Act.

Post-audit shall be conducted in offline mode till the time an online facility is made available on ACES-GST portal. The refund orders having refund claims of Rs. 1 Lakh or more and the relevant documents may be provided to the post-audit cell by the concerned division through e-office within 7 days of issuance of refund sanction order in Form RFD-06. The report of the Post-Audit Cell shall be furnished to the Review Cell through e-office within the said period of 3 months.

Further, refund claims shall not be subject to pre-audit as already clarified through *Circular No. 17/17/2017-GST dt. 15.11.2017*.

8. GSTR-2B introduced from 1st January 2022 in place of GSTR-2A

To give effect to the above, vide Circular 197/09/2023- GST, Circular No. 125/44/2019-GST, 135/05/2020-GST & 139/09/2020-GST stands modified to the extent that Invoices uploaded by supplier in GSTR-1 are reflected in GSTR-2B (earlier it was GSTR-2A) of the applicant of refund.

9.* Requirement of the undertaking in FORM RFD 01 inserted vide *Circular No. 125/44/2019-GST dated 18.11.2019

Section 42 of CGST Act has been omitted w.e.f. 1st October, 2022 vide *Notification No. 18/2022-CT dated 28.09.2022*. Further, an amendment has also been made in section 41 of the CGST Act, wherein the concept of provisionally accepted input tax credit has been done away with. Besides, FORM GSTR-2 and FORM GSTR-3 have also been omitted from CGST Rules.

Para 7 of *Circular No. 125/44/2019-GST dated 18.11.2019* & the undertaking in FORM GST RFD-01 may, therefore, be read as follows:

Para 7: "The applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."

Undertaking in FORM GST RFD 01:- "I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST/ SGST Act have not been complied with in respect of the amount refunded."

Consequentially, Annexure-A to the *Circular No. 125/44/2019-GST dated 18.11.2019* also stands amended to the following extent:

"Undertaking in relation to sections 16(2)(c) and section 42(2)" wherever mentioned in the column "Declaration/Statement/Undertaking/Certificates to be filled online" may be read as "Undertaking in relation to sections 16(2)(c)".

THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Statement of Objects and Reasons:

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

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

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

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

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

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

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

(i) Provides for levy of tax on all inter-State supplies of goods or services or both (except alcoholic liquor for human consumption) at a rate recommended by the GST Council (not exceeding 40%);

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

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

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

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

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

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

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

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

Chapter 1
Preliminary

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

Statutory Provisions

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

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

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

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

Title

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

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

Extent

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

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

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

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

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

Commencement

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

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

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

Statutory Provisions

2. Definitions

In this Act, unless the context otherwise requires-

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

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

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

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

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

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

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

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

Continuous journey refers to a journey where:

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

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

(c) Journey does not involve any stopover at any of the legs of the journey for which one or

more separate tickets or invoices are issued ("Stopover" means a place where a passenger disembarks from the conveyance).

The following aspects need to be noted:

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

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

The customs frontiers of India include the following:

(a) Customs Port;

(b) Customs Airport;

(c) International Courier Terminal;

(d) Foreign Post Office;

(e) Land Customs Station;

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

The following aspects need to be noted:

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

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

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

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

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

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

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

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

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

Following further aspects may also be noted:

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

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

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

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

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

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

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

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

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

Relevant Provisions of the Statute

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

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

Under the GST regime, export of service will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

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

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

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

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

The following aspects need to be noted:

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

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

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

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

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

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

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

Relevant Provisions of the Statute

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

Fixed Establishment refers to a place:

(a) Having a sufficient degree of permanence

(b) Having a structure of human and technical resources

(c) Other than the registered place of business

The following aspects need to be noted:

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

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

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

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

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

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

(9) "Government" means the Central Government;

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

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

(b) Financial assistance comes entirely from the Government;

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

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

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

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

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

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

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

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

Relevant Provisions of the Statute

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

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

The following aspects need to be noted:

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

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

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

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

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

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

Relevant Provisions of the Statute

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

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

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

(a) The supplier is located outside India,

(b) The recipient is located in India

(c) Place of supply is in India.

The following aspects need to be noted:

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

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

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

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

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

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

The following aspects need to be noted:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) established by any Government,

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

The phrase "non-taxable online recipient", as amended by *The Finance Act, 2023*, has simplified this definition by stating that it shall mean an unregistered person receiving OIDAR services in India. Further, the condition that it should not be for business purposes has now been removed.

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

(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply [4]*[~~essentially automated and involving minimal human intervention and~~] impossible to ensure in the absence of information technology and includes electronic services such as, —*

(i) advertising on the internet;

(ii) providing cloud services;

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

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

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

(vi) digital data storage; and

[5]*[(vii) online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods & Services Tax Act, 2017].*

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

The scope of online gaming has been restricted in OIDAR to exclude that which is covered as online money gaming as per section 2(80B) of the CGST Act, 2017.

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

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

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

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

Following aspects need to be noted:

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

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

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

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

Following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or

charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.

- The taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making specified inward supplies from unregistered persons, would be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax. Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.

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

It covers two categories of zones as under:

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

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

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

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

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

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

(b) Special Economic Zone Authority

(c) Co-developer

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

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

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

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

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

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

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

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

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

(a) Export of goods or services or both

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

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

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

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

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

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

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

Chapter 2
Administration

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

Statutory Provisions

3. Appointment of officers

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

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

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

Relevant Provisions of the Statute

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

3.1/4.1 Introduction

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

3.2/4.2 Analysis

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

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

Chapter 3
Levy and Collection of Tax

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

Statutory provisions

5. Levy and Collection

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

Provided that the integrated tax on goods [6][other than the goods as may be notified by the Government on the recommendations of the Council] imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

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

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

(4) [7][The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified

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

[7] Substituted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. Notified through Notf No. 1/2019-IT dt. 29.01.2019.

categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.]

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

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

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

5.1 Introduction

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

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

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

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

5.2 Analysis

In terms of section 2(24) of the Act, any words or expression which are used in this Act, but are not defined should be assigned the meaning as given to such words or expressions in the CGST Act, the UTGST Act, and the GST (Compensation to States) Act.

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

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

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

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

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

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

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

Imports: Proviso to section 5(1) makes a very important exception in respect of "goods (other than goods as may be notified by the Government on the recommendations of the Council) imported into India". By *Notification No. 03/2023- IT dt. 29.09.2023*, the Government has notified supply of online money gaming as goods, on import of which proviso to section 5(1) shall not apply. Import of goods is defined in section 2(10) in a manner identical with the definition under Customs Act in section 2(23). Hence, the important exception made under the proviso is the carve out from the levy under section 5 supplies involving import of goods other than supply of online money gaming and place such transactions under Customs Act and not under IGST Act. In other words, IGST on import of goods *viz.* 'online money gaming' will be liable to IGST under the IGST Act and not under the *Customs Tariff Act* unlike other goods. *Vide Taxation Laws (Amendment) Act, 2017* sweeping changes have been brought about in Customs in the wake of introduction of GST. Amongst others, one significant change is that, in addition to basic customs duty levied under section 12 of Customs Act- section 3 of Customs Tariff Act - sub-section 7 levies IGST on import of goods. It merits to mention here is that sub-section 9 levies compensation cess wherever applicable when the said goods are imported into India.

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

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

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

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

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

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

Please note the following aspects:

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

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

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

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

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

In view of the foregoing, *proviso* to section 5(1) is of paramount importance which makes way for Customs Tariff Act to take over levy of IGST on imported goods (other than the goods as may be notified by the Government on the recommendations of the Council i.e. supply of online money gaming) leaving IGST under IGST Act inapplicable to imported goods. And once Customs Tariff Act applies, it attracts the levy of IGST (CTA) not before the bill of entry for home consumption is due to be filed in accordance with the provisions of Customs Act. So, there are two kinds of IGST, namely:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E-commerce: Where any supply of services is effected through e-commerce operator (commonly known as services provided by aggregator), the law provides that the Central / State Government may on recommendation of the Council specify (notify) that the e-commerce operator will be liable to discharge the tax on such supplies. It is important to note that, in such supplies, the e-commerce operator is neither the actual supplier of service/s nor does he actually receive the services. The actual supplier of services is a third party who provides such service to the customer through e-commerce operator. Instead of

levying tax on such actual supplier, the law has imposed levy on e-commerce operator. Therefore, this would be an exception to the imposition of tax as specified in para supra. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any goods through an e-commerce operator.

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

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

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

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

(ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods

and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

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

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

In case where the e-commerce operator:

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

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

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

5.3 Related provisions of the Statute

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

5.4 FAQs

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

Ans. Yes, clause (d) of section 2(17) of the CGST Act provides that supply or acquisition of goods including capital goods and services in connection with commencement or

closure of business is also included in the term "business". Therefore, the goods element in the sale of business, would be regarded as 'supply'. However, it may be noted here that sale of undertaking as a whole wholly or partly on a going concern basis will be regarded as an exempt supply in terms of the exemption notification.

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

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

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

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

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

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

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

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

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

Ans. Sale of old furniture by a garment manufacturer.

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

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

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

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

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

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

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

Statutory provisions

6. Power to grant exemption from tax

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

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

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

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

6.1 Introduction

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

6.2 Analysis

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

(i) Exemption should be in public interest

(ii) By way of issue of notification

(iii) On recommendation from the Council

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

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

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

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

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

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

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

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

To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an "Explanation" at any time within a period of one year from the date of issue of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.

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

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

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

Effective date of the notification or special order

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

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

Exemptions issued under IGST Act:

Following exemptions have been issued under IGST Act:

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

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

6.3 Related provisions of the Statute:

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

6.5 FAQs

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

Ans. Yes.

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

Ans. Yes.

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

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

Chapter 4
Determination of Nature of Supply

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

Statutory provisions

7. Inter-State Supply

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

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

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

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

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

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

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

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

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

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

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

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Related Provisions of the Statute

Statute	Section / Rule	Description
IGST	Section 2(4)	Definition of 'customs frontiers of India'
IGST	Section 2(5)	Definition of 'export of goods'
IGST	Section 2(6)	Definition of 'export of services'
IGST	Section 2(10)	Definition of 'import of goods'
IGST	Section 2(11)	Definition of 'import of services'
IGST	Section 2(15)	Definition of 'location of supplier of services'
IGST	Section 2(19)	Definition of 'Special Economic Zone'
IGST	Section 2(20)	Definition of 'Special Economic Zone developer'
CGST	Section 2(56)	Definition of 'India'
CGST	Section 2(103)	Definition of 'State'
CGST	Section 2(114)	Definition of 'Union Territory'
IGST	Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 15	Refund of IGST paid on supply of goods to tourist leaving India
IGST	Section 5	Levy and collection of tax
CGST	Section 9	Levy and collection of tax
CGST	Section 25	Procedure for Registration

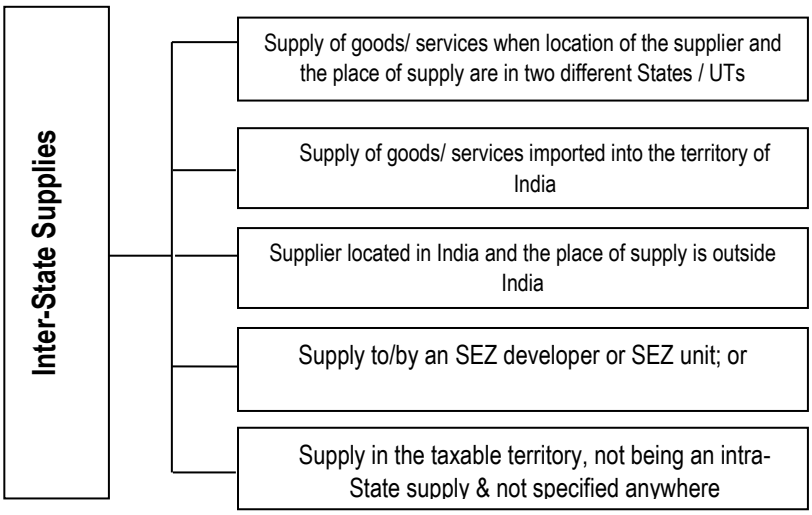
7.1 Introduction

Having examined levy and the scope and coverage of supply, the next aspect to determine is the nature of supply so as to identify the right kind of tax applicable in a given case. It is important to note that nature of supply is not a question of fact but the result of application of the law to the fact, which provides us the answer. Concluding the answer about the nature of tax is paramount importance not only for the selection of the right kind of tax but also to recognise the departure of GST from the well understood principles under the erstwhile law.

Nature of supply does not refer to 'place of supply'. The next Chapter deals with place of supply but before getting into place of supply it is important to understand the nature of supply. There are very specific principles laid down that need to be identified from the facts in each transaction in order to determine the nature of supply that is involved. This section

provides as to when the supplies of goods and/or services shall be treated as Supply in the course of inter-State trade/commerce.

Section 7(1) and 7(2) of IGST Act, primarily covers two kinds of supplies – Supply of goods within India and supply of goods imported into India respectively and Section 7(3) and 7(4) of IGST Act, covers two kinds of supplies – supply of services within India and import of *services* into India respectively. Certain supplies of goods or services are treated as supplies in the course of inter-State trade or commerce as defined in section 7(5) of the IGST Act.



7.2 Analysis

Inter-State supply of goods

At the outset one may need to bear in mind the treatment extended to the subject matter of supply, that is, whether the supply is of goods or services or both or supply involving goods but treated as supply of services in terms of the fiction specified in Schedule II of CGST Act, 2017. In respect of goods (treated as goods), if the location of the supplier and the place of supply are in two different States or UT or either, then the supply will be in the course of inter-State trade or commerce (amongst others).

We need to pause here and examine the two terms that have been used, namely:

a) **Location of supplier** – Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is not an oversight of the draftsmen but a deliberate intention of the lawmakers to leave it to the facts of each case to determine the 'location of supplier of goods'.

In most of the scenarios, the location of supplier would be the place where the supplier holds the physical possession of such goods in his control. This is in sync with the concept of requirement of state-based registration i.e. the place from where the supply is made as provided in Section 22 of the CGST Act 2017. The location of supplier would

generally be the place from where supplies are made and where such goods were held in possession by the company.

For example, if a company, having its branch in both Delhi and Gujarat, is making a supply of material from its Gujarat branch to a customer in Maharashtra, then the location of supplier would be Gujarat without the involvement of Delhi branch altogether.

Having said this, this rule cannot be made universal. Another relevant aspect of determination of the location of supplier of goods is the place from which the contract for such supply of material was executed.

For example, if a company has executed its contract from Delhi to supply goods to a recipient in Maharashtra. However, the said company has instructed its warehouse in Gujarat to deliver such goods to the customer in Maharashtra for better logistics planning. From the customer's perspective in Maharashtra, it would receive invoice from the supplier's address in Delhi because the purchase order / contract had provided such address of the supplier. For this leg of the transaction, the location of supplier would be Delhi i.e. the location at which contracted to supply such goods was entered.

However, it would also entail requirement of raising of invoice for supply of goods from Gujarat to Delhi because the Gujarat branch has delivered the actual goods and the cost of such goods had also been recognized in such Gujarat. Further, the sale consideration has been recognized in the books of Delhi even though there had been no corresponding inward supplies in Delhi. For this leg of the transaction, the location of supplier would be Gujarat i.e. the physical point from which the goods had been dispatched.

This would also ensure that there is no break in the credit chain and smooth passing of ITC between various parties. Further, the illustration would remain the same whether Delhi and Gujarat are considered as two distinct persons or completely different legal persons.

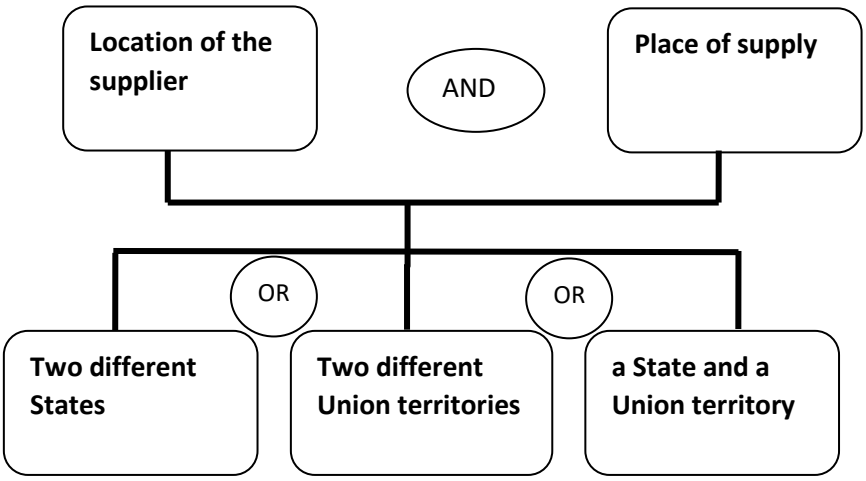
Further, a dichotomy also exists between the concept of casual taxable person and goods physically carried for sale on approval basis. The former requires availing temporary registration in a State where a person does not have a fixed place of business. Most commonly, this is used for sale of goods in exhibitions for a temporary time period. On the other hand, *Circular no. 10/10/2017-GST dated 18.10.2017*, clarification was given in a case where the suppliers are registered in a State but have to visit other States other than their State of registration and need to carry the goods for approval. In such case, if the goods are approved, the invoice is issued at the time of supply. It was clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of section 5 of the Integrated Goods and Services Tax Act, 2017. In such case also, the location of supplier is the place where the supplier is registered and not the place where the goods are actually present when they are approved. Even though this is in contradiction with the concept of Casual Taxable

person which requires the supplier to register in the State where he is carrying the goods, this clarification was provided for the ease of trade and industry.

Given the changing characteristics for determination of location of supplier of goods in various scenarios, one cannot adopt a singular factor for this purpose. Depending on the nature of such transaction, the location of supplier of goods needs to be comprehended.

b) **Place of supply** – It appears to be a phrase that is easily understandable but due to the presence of Chapter V (i.e., place of supply of goods or services or both) in this Act demands that the common-sense understanding be disregarded but the meaning ascribed to the phrase 'place of supply' from sections 10 to 14 of this Act be applied. 'Place of supply' is a phrase of legal significance whose meaning is to be determined by examining the respective sections in Chapter V and brought to bear while determining nature of supply. For example, manufacture in Maharashtra and supply to a company in Delhi on Ex-Works basis, its place of supply has to be the location of completion of delivery. And in respect of the new supply from Maharashtra to Madhya Pradesh, the place of supply is where the movement terminates for delivery – Madhya Pradesh.

It is therefore important to identify the ***location of supplier of goods*** and not based on a statutory definition but by inquiring into the facts of a transaction of supply and comparing this with the ***place of supply*** appointed by the statute in Chapter V. Now, if these two are situated in ***different States or UTs or either***, then the nature of supply is declared by section 7 to be in the course of inter-State trade or commerce.



This provision is subject to the provisions of section 10 because any interpretation or application of this section 7 cannot be in derogation of the place of supply dictated by section 10. Section 7 can be correctly interpreted only by identifying the location of supplier of goods as provided above.

With regard to supply of goods that are imported into the territory of India, by legislative override it is declared that if the goods crossed the customs frontiers of India, the supply will always be in the course of inter-State trade or commerce. Reference may be made to the definition of import of goods [section 2(10)] which adverts to the physical movement of goods into India from a place outside India by the active efforts on the part of any person (who may be situated in India or outside India).

The use of the word 'bringing' in section 2(10) excludes naturally and involuntarily occurring phenomena causing the relocation of goods into India from a place outside India. There may be any number of supplies taking place between persons who are incorporated outside India and persons who are incorporated and even registered in India – they will all be transactions of supply in the course of inter-State trade or commerce – till such time the goods cross the customs frontiers of India.

Import of goods

We need to pause here again and examine two kinds of transactions – those that commence outside the territory of India and are concluded also outside territory of India and those that commence outside India but conclude by entering the territory of India. For example, company in Germany supplies goods from Germany to another company in Sri Lanka – this is not a supply in the course of inter-State trade or commerce because it commences and concludes outside the territory of India. It would be so, even if the goods were supplied by the company in Germany from Germany to a customer incorporated in India if the goods are not 'brought' into India but sold in high seas to yet another company in Singapore. In order for every supply to come within the operation of sub-section 2 to section 7 it requires that the resultant effect of *the* supply must cause the goods to enter the territory of India. This Act does not enjoy extra-territorial jurisdiction and is limited to imposing tax if the goods are imported into the territory of India. In this regard Customs circular issued by the CBEC and an Advance Ruling by the Kerala Authority for Advance Ruling (AAR) is relevant, which is discussed in detail in other chapters. After the CGST Amendment Act 2019 as effective from 01.02.2019, goods sold before the same is cleared for customs clearance i.e., high sea sales, sale of goods when they are in the bonded warehouses before customs clearance etc. will not be treated as a supply under Schedule III read with section 7(2) of the CGST Act 2017.

Further, if goods have been brought into India but have not left the customs frontiers of India, that is, the limits of a customs area, any supplies that are taking place after being brought into India until they cross the customs frontiers of India even though the place of entry into India and the place that comprises the customs frontier may be in the same State will continue to be supply is in the course of inter-State trade or commerce.

For example, goods have been imported from France by a company incorporated and registered in Nasik which have landed at Mumbai port but during their clearance are supplied by the Nasik company to a company in Pune, this supply continues to be in the course of inter-State trade or commerce. Even though the supplier is in Nasik and the recipient is in

Pune, since the goods have not yet crossed the customs frontiers of India at the time of supply. This supply comes within the operation of sub-section 2 of section 7. A test that can be applied to determine whether the supply has been concluded before the goods crossed the customs frontiers of India or not crossed the customs frontiers of India is – who has filed a bill of entry in respect of the goods imported as required under the Customs Act. Transactions taking place before filing of bill of entry are termed as "high sea sale" transactions under common trade practice where the original importer sells the goods to a third person before the goods are entered for customs clearance. This supply is covered within definition of inter-State supply. Provisions of sub-section (12) of section 3 of Customs Tariff Act, 1975 in as much as in respect of imported goods provides that all duties, taxes, cess' etc. shall be collected at the time of importation i.e., when the import declarations are filed before the customs authorities for the customs clearance purposes. High sea sale transactions, though regarded as supply in the course of inter-State trade or commerce, are not subject to levy of IGST as the supply takes place before filing of Bill of entry and IGST in case of importation of goods can be levied at the time of filing of Bill of Entry. Hence, IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas sales contract, details of service charges/ commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In the above example, supply by Nasik company to recipient of Pune is high sea sale transaction and is not subject to levy of IGST. When Pune recipient files bill of entry, IGST has to be paid on the assessable value which shall include the margin charged by Nasik supplier also. In fact, after the CGST (Amendment) Act 2018, all high seas transactions and merchant trading transactions will be covered by Schedule III i.e., activities which are neither supply of goods nor supply of services w.e.f. 01.02.2019.

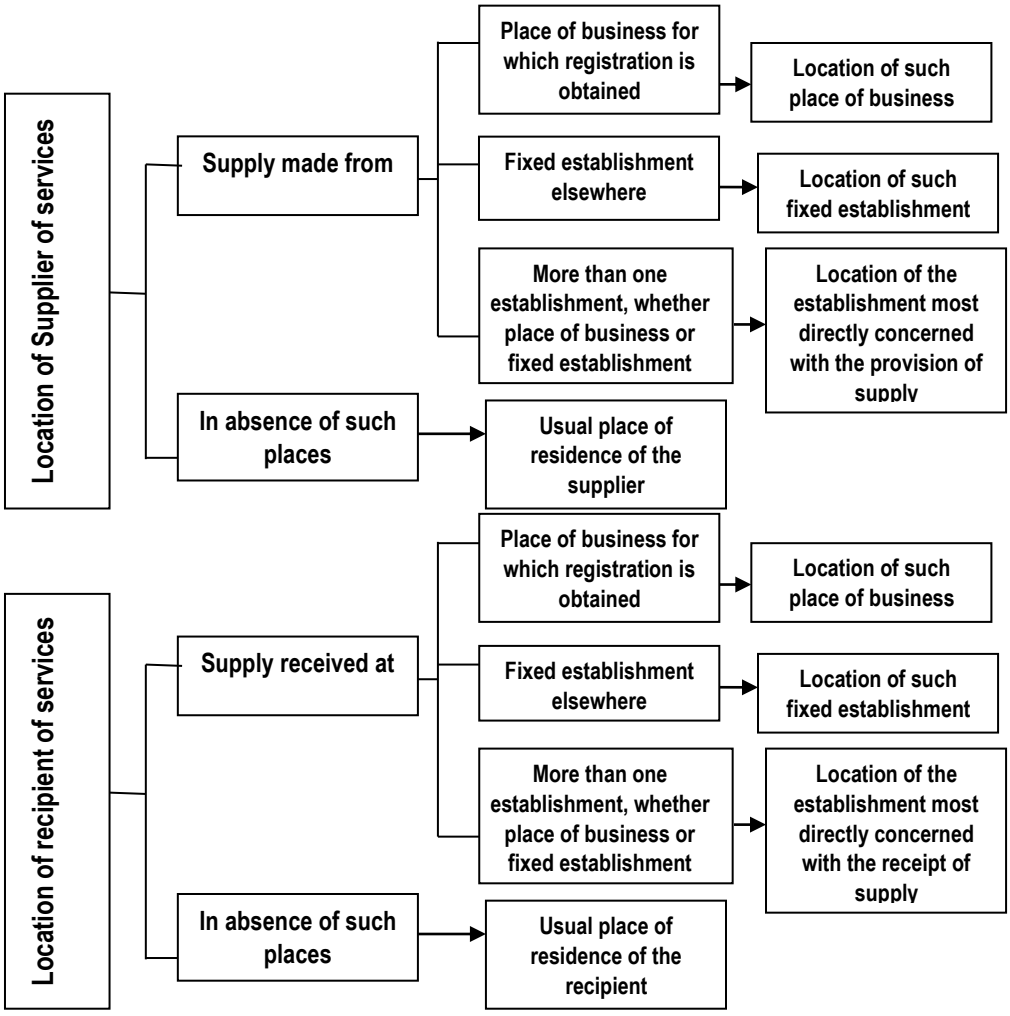
It has been further clarified vide *The Finance Act, 2023* that para 7, 8 (a) and 8 (b) of Schedule III, shall be applicable retrospectively with effect from 01.07.2017, so as to treat the activities/ transactions mentioned in the said paragraphs as neither supply of goods nor supply of services retrospectively. It has also been clarified that where the tax has already been paid in respect of such transactions/ activities during the period from 01.07.2017 to 31.01.2019, no refund of such tax paid shall be available. These clarifications have been notified through *Notification No. 28/2023-CT dated 31.07.2023* and brought into force w.e.f. 01.10.2023.

Inter-State supply of services

Continuing with inter-State supply, but in respect of services, it is firstly important to recollect that this provision will apply not only in respect of supply of services but also in respect of transactions involving goods which are treated as supply of services by the fiction in Schedule II of the CGST Act, 2017. The discussion regarding location of supplier of goods and place of

supply of goods will be applicable in the context of services but only to a limited extent for the reason that location of supplier of services has been defined in this Act.

The location of supplier of services and the place of supply of services are in two different States or UTs or either, such as supply of services shall be in the course of inter-State trade or commerce. It is interesting to note that inter-State trade is not simply called 'inter-State trade' but is prefixed with 'in the course of'. This prefix is not without reason, because such prefix is missing in relation to intra-State supply. The significance of 'in the course of' is well explained in the decision of *State of Bihar Vs Telco Ltd. 27 STC 127* at pg. 148 where the Hon'ble Supreme Court has held that it signifies a series of activities that are all inter-related in an unbroken chain of events so intimately linked to each other that all of them are bound together 'in the course of' such an inter-State trade transaction.



Location of supplier of services is defined to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places 'from where' supplies

are made being a fixed establishment – a place with sufficient degree of permanence and suitable structure to supply services. And lastly, the usual place of residence of the service provider. It is interesting to note that the location of supplier of services has nothing to do with the business premises 'wherefrom' supply is made.

Special category of inter-State supplies

As per section 2(105) of the CGST Act, 2017, supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. It is further provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims. The following categories of supplies of goods or services or both, are treated as being in the course of inter-State trade or commerce:

(a) when the supplier is located in India and the place of supply is outside India

Here, it is extremely important to note that usage of the 'supplier is located' is not to be equated with 'location of supplier'. The understanding of the term 'location of supplier' has already been provided above. But the deliberate departure in usage of the same set of words in 'supplier located in India' is almost misleading. Supplier is located in India does not refer to location of supplier. Instead, it is a simple question of fact as to where the supplier is located. Please note, that the 'supplier' is none other than the **'one who supplies'** and not his agent or representative or any other person. The question that arises is – what is the GST impact in case the supplier is located outside India and the place of supply is outside India? The Act applies to supplies within the taxable territory and when both – supplier as well as place of supply – being located outside India, the Act does not enjoy any jurisdiction to impose tax even if the recipient is located in India. The destination of consumption being decided by the place of supply provisions and not location of the recipient.

(b) where the supply is 'to' or 'by' an SEZ developer or unit

Here, it is important to note that supply to SEZ (developer or unit) is treated as inter-State supply. Supply 'by' SEZ (developer or unit) will also be treated as inter-State supply. Further, the implication of this provision is also that supply by SEZ's *inter se* – one SEZ unit (or developer) to another SEZ unit (or developer) – will also be treated as a supply in the course of inter-State trade or commerce.

Let us take a few examples to illustrate the implications from this provision:

- Taxable person (non-SEZ) located in Jaipur supplying goods to a SEZ unit located in Jodhpur is a supply in the course of inter-State trade or commerce.
- SEZ unit in Kolkata supplying services to another SEZ unit in Kolkata is a supply in the course of inter-State trade or commerce.
- Lease of premises by SEZ developer in Chennai to SEZ unit in that same zone in Chennai will be a supply in the course of inter-State trade or commerce.
- Supply by SEZ unit in Kochi to a non-SEZ in Kochi will be a supply in the course of inter-State trade or commerce.
- Disposal of scrap by a SEZ developer in Mumbai to a scrap dealer in Mumbai (outside the zone) is a supply in the course of inter-State trade or commerce.
- Export of goods by a SEZ unit to a customer in Italy is a supply in the course of inter-State trade or commerce.

(c) Any supply not being an intra-State supply

Here, it is to be considered that any supply that falls outside the scope of intra-State supply will not escape GST but would be an inter-State supply by virtue of this residual provision in the Act.

Statutory provisions

8. Intra-State Supply

(1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely: –

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) goods imported into the territory of India till they cross the customs frontiers of India; or

(iii) supplies made to a tourist referred to in section 15.

(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1 –––For the purposes of this Act, where a person has, —

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment [8]~~[being a business vertical]~~ registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

Explanation 2 ––A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

8.1 Introduction

With the background discussion on inter-State supplies, it would be appropriate to contrast this understanding with a discussion on intra-State supplies.

8.2 Analysis

Intra-State supply of goods

In relation to goods, section 8 of the IGST Act provides that where the 'location of the supplier' and the 'place of supply' are in the same State or same UT, such a supply will be treated as an intra-State supply. Reference may be had with respect to the discussion on location of supplier of goods in the context of Section 7 of the IGST Act which may be relied upon for the purpose of this discussion. This provision too, is made subject to the provisions of Section 10, that is, regarding the place of supply, and the conclusion reached by applying the said provisions is required to be read into this Section for the purpose of determination of intra-State in nature. The two factors – 'location of supplier' and 'place of supply' – must at the conclusion of a supply, be in the same State or UT. And when it is so, the supply would be an intra-State supply of goods.

For example, a company having its regular registration in Uttar Pradesh has taken a causal registration in Odisha. It has purchased certain goods in Odisha and supplying the same to the customer also in Odisha under two separate transactions of supply, both of them will be intra-State supplies.

Therefore, it is important to bear in mind that the place of incorporation of the supplier in any transaction relating to goods is not relevant as the location of the supplier which has been explained earlier as – physical point where the goods are situated under the control of the distinct person, wherever incorporated or registered, ready to be supplied. Not only this, three cases have been discussed in the above chapter wherein the location of supplier of goods may not be the location of supplier (i.e., in-transit sales, sales on approval or return basis wherein the goods are carried from one state to another and sales from the port directly without bringing the same to the registered place of business of the importer).

[8] *Omitted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, notified through Notf No. 1/2019-IT dt. 29.01.2019.*

Further, three exceptions have been carved out in this provision to state that a few supplies are to be treated as inter-state even if the supplier and recipient are in the same state:

(1) supply 'to' or 'by' a SEZ developer or unit;

(2) supply involving goods imported into India but not beyond the customs frontiers;

(3) supply to outbound tourist in terms of Section 15 of the IGST Act.

These three exceptions make it abundantly clear that they have been treated to be an inter-State supply, expressly stated under section 7. This proviso excludes any opportunity to question the probable intra-State nature of the said supply. As discussed in the various examples, even though the movement of goods may be within the same State, due to the deeming fiction imposed in section 7 – these supplies are treated as supplies in the course of inter-State trade or commerce – and cannot be disturbed by section 8. The express exclusion is evidence of a suspect inclusion – with this proviso, there is no question of the intra-State nature of the supplies listed.

Please note that the supplies are not three specific supplies but three classes of supplies. Examples of supply to or by a SEZ developer or unit has already been discussed in detail earlier the same may be referred. Supply involving goods imported into India also been discussed and the same may be referred. For examples, regarding supplied to tourist, kindly refer discussion under section 15.

> 2(15) location of supplier of services means –
>
> (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
>
> (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
>
> (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
>
> (d) in the absence of such places, the location of the usual place of residence of the supplier;

Intra-State supply of services

With regard to supply of service, if the twin factors – location of supplier of services' and 'place of supply of services' – are in the same State or UT, then such supply will be treated as intra-State supply. Location of supplier of services has been defined in the Act to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places and reference may be had to the discussion in respect of inter-State supply of services for the implications of this definition.

To provide some additional illustration, consider audit services being provided by a Chartered Accountant located in Delhi to a company in Delhi. For the purpose of the audit, the Chartered Accountant visits the company's factory located in Noida. Here, although the

Chartered Accountant is physically moving to Noida, he is not supplying the audit services from Noida. Here, the transaction will be an intra-State supply from Delhi to Delhi. Please refer to more detailed discussion under section 12.

Further, here too we find caution exercised in expressly excluding supply of services 'to' or 'by' SEZ developer or unit from the scope of intra-State supply of services. The two explanations provided are significant as the concept of distinct persons in Section 25(4) and (5) of the CGST Act is further clarified in stating that the following will also be distinct persons, namely:

- establishment in India and an establishment outside India;
- establishment in a State or UT and an establishment outside that State or UT;
- establishment in a State or UT and any other establishment (registered separately) in the same State or UT.

Note that the term 'establishment' may be interpreted as being similar to 'fixed establishment' which is defined in this Act in identical manner with the definition in section 2(50) of CGST Act. It refers to it being 'a place (other than registered place of business) with sufficient degree of permanence and suitable structure to supply services or to receive and use the services for its own needs'.

Section 2(7) of IGST Act, 2017 - *fixed establishment means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;*

Place of supply concept – goods or services

Location of Supplier	Place of Supply	Whether inter-State/ intra-State
Kerala	Bihar	Inter-State (IGST)
Puducherry	Puducherry	Intra-State (CGST + Puducherry GST)
Daman and Diu	Daman and Diu	Intra-State (CGST + UTGST)
Chandigarh	Punjab	Inter-State (IGST)
Chandigarh	Daman and Diu	Inter-State (IGST)
Goa	Goa	Intra-State (CGST + Goa GST)
Karnataka (SEZ)	Karnataka (non-SEZ)	Inter-State (IGST)

8.3 Issues and concerns

1. By virtue of section 7(5) of the IGST Act, all supplies made by or to SEZ units or developers are treated as inter-State supplies. So to say, a small tea vendor (kirana shop) supplying evening beverages to an SEZ unit, or an inward supply of office

stationery from a small stationery supplier, by an SEZ unit, will be regarded as inter-State supplies. In this regard, it is important to note that the GST Law mandates registration, regardless of the turnover, where a supplier is engaged in effecting inter-State taxable supplies. Although the inclusion of such transactions was, perhaps, not the intent of the legislature, it is noted that there is no relaxation provided in this regard, in respect of mandatory registration in respect of supply of goods.

2. Evidently, the law provides for the definition of the phrase 'location of the supplier of services' and turns a blind eye to the phrase 'location of the supplier of goods'. Accordingly, the debate arises as to what constitutes the location of the supplier, in respect of goods. Drawing inference from section 22(1) of the CGST Act, every supplier shall be liable to be registered in the State or UT from where he effects taxable supplies, subject to crossing the aggregate turnover threshold limits. This means that, while a supplier may be registered in one State, and stocks his goods in another State for any reason, shall be required to take a registration in the second State as well, when he effects a supply of such goods from the State. Merely because the supplier has not obtained a registration in the second State does not alter the fact that the supply is in fact, effected from a state other than the State in which he has obtained registration. Therefore, the location of the supplier is regarded as the location of the goods at the time of removal of such goods for supply.

Statutory provisions

9. Supplies in Territorial Waters

Notwithstanding anything contained in this Act, —

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Related Provisions of the Statute

Statute	Section / Rule	Description
IGST	Section 2(5)	Definition of 'export of goods'
IGST	Section 2(6)	Definition of 'export of services'
IGST	Section 2(10)	Definition of 'import of goods'
IGST	Section 2(11)	Definition of 'import of services'
IGST	Section 2(15)	Definition of 'location of supplier of services'
CGST	Section 2(56)	Definition of 'India'

CGST	Section 2(103)	Definition of 'State'
CGST	Section 2(114)	Definition of 'Union Territory'
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 8	Meaning of 'intra-State supplies'
IGST	Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
IGST	Section 5	Levy and collection of tax
CGST	Section 9	Levy and collection of tax
CGST	Section 25	Procedure for Registration

9.1 Introduction

GST being a destination-based consumption tax (discussed in greater detail in section 10), the supply may at times take place in the territorial waters of India, including cases where a supplier is required to travel into the territorial waters in order to supply goods or services. While the nature of supply in these cases may be inter-State supplies (in terms of section 7(5)(c) of the IGST Act – residuary clause), by virtue of this Section, the law provides a deeming fiction to reinstate the steps to be applied in sections 7 and 8 by artificially specifying the location of 'location of supplier' and the location of 'place of supply'. For this reason, clear provisions are laid down as to where on the land mass of India, the actual location will be linked to. Please note, the statute uses the expression 'deemed to be' which would supply an artificial meaning. Also, this provision does not seek to violate exclusive jurisdiction of the Union on matters of territorial waters but merely establishes a link to the land mass of India to overcome judicial intervention or assumptions by industry.

9.2 Analysis

The provision identifies two facts that have been discussed at length in the context of section 7 and 8, namely:

- Location of supplier of goods or services or both
- Place of supply of goods or services or both

By applying the provisions of sections 10 and 12, if it is established that the 'place of supply' or 'the location of the supplier' is found to be in the territorial waters and not on the land mass,

an ambiguity could arise as to where the supplier is required to be registered, or which state the tax on the supply should be apportioned to. To address these situations, the statue lays down, vide this deeming fiction, that such locations – 'supplier' or 'place of supply' – will be the most proximate State or UT.

For example, consider a case where a ship is moored off the coast of Kochi (Kerala) needs a replacement of a crucial part, and such replacement is carried out along with the supply of the part by a Company located in Karnataka for the shipping company from United Kingdom. In this case, the place of supply of the part, being the location of the ship (as determined in terms of Section 10) will create doubt about the applicability of GST. By virtue of the provisions of section 9, it is clear that both the location of the supplier and the place of supply will not be the *territorial waters* but would be Kochi itself. With this doubt having been resolved, it would be an inter-State taxable supply effected by the Company in Karnataka *albeit* to the UK Company, while the State tax would be apportioned to the Kerala Government.

The non-obstante clause at the beginning of this section is important to overcome any alternative interpretations that may be attempted by reading other provisions of the Act.

9.3 Issues and concerns

1. While it is clear that the location on the landmass that is most proximate to the location in the territorial waters will be the deemed location of the supplier / place of supply, as the case may be, it may be noted that the GST Law does not prescribe the methodology for determining the distance between the location in the territorial waters and the landmass. Therefore, the basis adopted for determining the nautical distance computed to determine the territorial waters is to be adopted to determine the distance.
2. There could be an exceptional case wherein the location in the territorial waters (being the location of the supplier / place of supply) is equally proximate from two different States / UTs. Such a scenario has not been addressed in this section and can only be dealt with as and when it is brought to light.

Chapter 5
Place of Supply of Goods or Services or Both

10.	**Place of supply of goods other than supply of goods imported into, or exported from India**
11.	**Place of supply of goods imported into, or exported from India**
12.	**Place of supply of services where location of supplier and recipient is in India**
13.	**Place of supply of services where location of supplier or location of recipient is outside India**
14.	**Special provision for payment of tax by a supplier of online information and database access or retrieval services**
[9][14A.	**Special provision for specified actionable claims supplied by a person located outside taxable territory]**

Statutory provisions

10. Place of supply of goods, other than supply of goods imported into, or exported from India

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, —

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the

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[9] *Inserted vide IGST (Amendment) Act, 2023 dt. 18.08.2023, notified through Notf. No. 2/2023-IT dt. 29.09.2023- Brought into force w.e.f. 01.10.2023.*

time of the delivery to the recipient;

[10]*[(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.*

Explanation.—For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;]

(d) where the goods are assembled, or installed at site, the place of supply shall be the place of such installation or assembly;

(e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

(2) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

Related Provisions of the Statute

Statute	Section / Rule	Description
CGST	Section 2(56)	Definition of 'India'
CGST	Section 2(93)	Definition of 'Recipient'
CGST	Section 9	Levy and collection of tax
IGST	Section 2(5)	Definition of 'export of goods'
IGST	Section 2(10)	Definition of 'import of goods'
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of inter-State supplies
IGST	Section 8	Meaning of intra-State supplies
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India

[10] *Inserted vide IGST (Amendment) Act, 2023 dt. 18.08.2023, notified through Notf. No. 2/2023-IT dt. 29.09.2023- Brought into force w.e.f. 01.10.2023.*

10.1 Introduction

Place of supply is important to determine the kind of tax that is to be charged. When the location of supplier and the place of supply are in two different States, then it will be an inter-State supply and IGST would be chargeable. And when they are in the same State, then it will be an intra-State supply and CGST/ SGST would be chargeable. 'Place of supply' is not a phrase of common understanding, it is a legal term and as in the cases of all legal terms, their common understanding must not be applied but the meaning assigned to them in the law must be followed. Place of supply, similar to time of supply, is that which the legislature has appointed.

Place of supply determines the State or Union Territory to which the SGST portion of the revenue accrues.

The importance of place of supply (POS) is underlined based on the questions as under:

1. Whether one has to charge IGST or CGST+SGST/UTGST?
2. Whether the recipient of goods or services would be able to claim ITC?
3. Whether there is any liability on services received from outside India (import of services)?
4. Whether the supply is export of services and zero rated?
5. Which state would be receiving the revenue from tax charged on any taxable supply?

GST is understood as a 'destination-based consumption tax' but there is no provision that declares this fact. This missing declaration is more than adequately supplied by the principle being embodied in the provisions of 'place of supply'. It is here that we find that the destination principle of GST is captured in most of the cases. However, in certain cases, they have deviated from the destination-based principles by declaring place of supply as 'a state other than the destination state'.

10.2 Analysis

(a) Place of Supply – Supplies within India

Place of supply of goods, where the supplier and the recipient are both located within India, will be determined in accordance with section 10 of the IGST Act. The phrase 'location of supplier of goods' has not been defined in the IGST Act and this is deliberate due to the reason that location of the supplier of goods can be easily tracked. Whereas location of supplier of services has been defined under section 2(15) of the IGST Act. Two very important phrases are relevant, namely:

- Location of supplier – the word 'location' in this phrase refers to the site or premises (geographical point) where the supplier is situated with the goods in his control ready to be supplied or in other words, it is the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. The concept of the location of supplier and its exceptions have been discussed in 'Chapter 4 – Determination of Nature of supply'.

—— Place of supply of goods – this is a legal phrase which the section decides to be the site or premises (geographical point) as its 'place of supply'.

Place of supply in each case is discussed below:

(a) **Where 'supply involves movement'**, the place of supply will be the place where the goods are located at the time at which the movement terminates for delivery to the recipient.

- ✓ The location of the goods is a question of fact to be ascertained by observing the journey that the goods supplied make from their origin from supplier and terminating with recipient.
- ✓ This movement, however, can be by the supplier or by the recipient after having disclosed the destination of their movement or journey.
- ✓ Movement 'terminates for delivery' requires a brief understanding about the manner of concluding delivery. It is easy to determine in a contract for supply where it records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way 'manner and timing' which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing as compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with to the satisfaction of the recipient.

Illustrations:

Section 10(1)(a): Supply involves movement of goods.

Particulars	Supplier's factory from where goods are removed	Termination of movement for delivery	Place of supply	Tax Payable
Movement of goods by the supplier (goods dispatched by supplier)	Orissa	Assam	Assam	IGST payable from Orissa*
Section 10(1)(a) read with section 2(96)(a) of CGST Act	Orissa	Orissa	Orissa	CGST/ SGST payable from Orissa*
Movement of goods by the recipient (goods collected by recipient)	Kerala	Goa	Goa	IGST payable from Kerala*

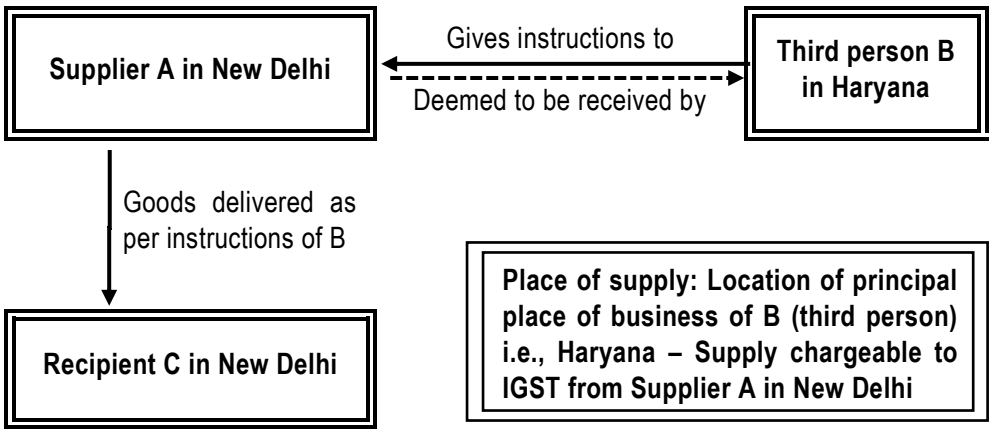
Section 10(1)(a) read with section 2(96)(b) of CGST Act	Kerala	Kerala	Kerala	CGST/ SGST payable from Kerala*

*The readers may refer the decision of the Hon'ble Supreme Court in the case of *Indian Oil Corporation vs UOI & others 1981 (SCR) (1)673*. The Hon'ble Supreme Court decided on a matter when one State in India (Uttar Pradesh) levied State Sales Tax and another State (Bihar) levied Central Sales Tax on the same transaction of sale. Hence, the tax payable in the above column may differ based on circumstances, movement of goods, delivery etc. and hence the above answer shall not be taken as final.

(b) **Where goods are delivered by the supplier to the recipient but at the instruction of a third person**, then the place of supply will be the principal place of business of such third person and not of the actual recipient.

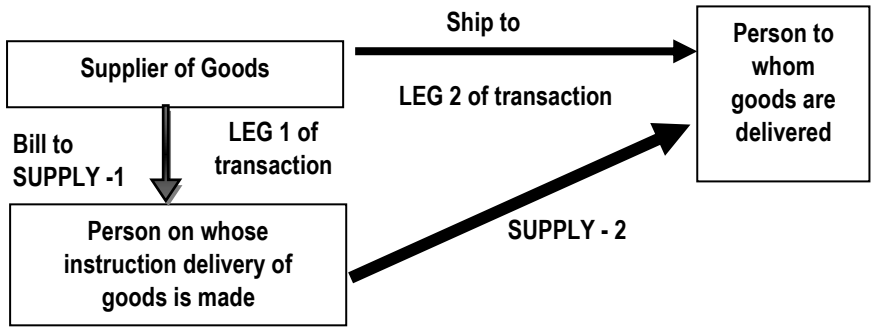
- ✓ It is important to identify the two supplies involved – by supplier to third person and by third person to recipient. This provision deals only with the first limb of supply, that is, supply by supplier to third person.
- ✓ The question that arises is – the locus or authority of the third person to issue instructions to the supplier regarding its delivery. Even though the definition in section 2(93) refers to recipient as the 'payer of the consideration', in this provision, recipient is the one who actually collects the goods. And the third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods. This is a case of constructive delivery to the third person, therefore, the third person turn out to be the recipient in this case.

  Now, the place of supply will not be dependent on whether the movement of goods is from one State to another (if the supplier and recipient are in two different States) but as declared by the section to be dependent on the principal place of business of such third person (i.e., the person providing instructions to the supplier where the delivery should take place).



Illustrations:

Section 10(1)(b): Supply involves movement of goods, and delivered to a person on the instruction of a third person



Leg 1: Supply from the supplier of goods (Seeta) to the person to whom the goods are delivered (Ram) on the instruction of a third person (Lakshman) – *Place of supply shall be the principal place of business of the person on whose instruction goods are delivered to the receiver of goods, being the principal place of business of Lakshman* [Section 10(1)(b)]:

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of business of Lakshman who instructed delivery to Ram	Place of supply for Seeta	Type of tax payable by Seeta
1	Ahmedabad	Ahmedabad	Amritsar	Amritsar	IGST at Gujarat
2	Ahmedabad	Amritsar	Amritsar	Amritsar	IGST at Gujarat
3	Ahmedabad	Bangalore	Bangalore	Bangalore	IGST at Gujarat
4	Ahmedabad	Chandigarh	Ahmedabad	Ahmedabad	CGST + Gujarat GST at Gujarat

Leg 2: Deemed supply of goods by the person on whose instruction (Lakshman) the goods were delivered by the original supplier (Seeta) to the receiver of goods (Ram) – *Place of supply shall be the location of the goods at the time of delivery to the recipient* [Section 10(1)(a)]:

Case	Location of Supplier – Seeta	Principal place of business of Lakshman who instructed delivery to Ram	Place of delivery of goods - Office of Ram	Place of supply for Lakshman	Type of tax payable by Lakshman
1	Ahmedabad	Amritsar	Ahmedabad	Ahmedabad	IGST at Punjab
2	Ahmedabad	Amritsar	Amritsar	Amritsar	CGST + Punjab GST at Punjab
3	Ahmedabad	Bangalore	Bangalore	Bangalore	CGST + Karnataka GST at Karnataka
4	Ahmedabad	Ahmedabad	Chandigarh	Chandigarh	IGST at Gujarat

(c) **Where the supply does not involve movement of goods**, the place of supply will be the location of the goods at the time of its delivery to the recipient.

- ✓ It is not a case where there is difficulty in movement of the goods, but a case where the supply contemplates that the goods ought not to move and when their delivery to the recipient will stand complete.
- ✓ For example, a generator that is bolted to the concrete floor in the basement of a building purchased by the tenant and being left behind at the time of terminating the tenancy, the supply of the generator by the tenant to the landlord for an agreed price is a case of 'supply that does not involve movement of the goods'. In such cases, the place of supply will be where the generator stands bolted to the concrete floor and without requiring any movement. The landlord (recipient) confirms satisfactory completion of delivery.

  Another example would be a case where the job worker develops a mould for the production of goods for the principal and retains the mould in his place itself for production of goods. The mould developed by the job worker is sold to the principal but the same is retained by the job worker without causing the movement of mould from job worker premises to principal premises. In this case, the place of supply would be job worker premises.
- ✓ This provision comes into operation only when its applicability is established based on the facts involved in the supply, that is, they do not involve movement.

Illustrations:

Section 10(1)(c): Supply does not involve movement of goods

Particulars	Location of supplier	Location of recipient	Location of goods at the time of delivery	Place of supply	Tax Payable
Sale of pre-installed DG Set	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Manufacture of moulds by job-worker (supplier), sold to the Principal, but retained in job worker's premises	Tamil Nadu	Kerala	Tamil Nadu	Tamil Nadu	CGST + Tamil Nadu GST payable at Tamil Nadu

(ca) **Where supply is made to a person other than registered person**, w.e.f. 01.10.2023, the place of supply will be the location as per the address of the said person recorded in the invoice issued in respect of the said supply. If the address of said person is not available on record, then location of supplier will be considered as the place of supply. An explanation is also provided stating that if the name of the State of the said person is recorded in the invoice, then it shall be deemed that the address of the said person is recorded in the invoice. This clause (ca) has been inserted vide *The Integrated Goods & Services Tax (Amendment) Act, 2023 dated 18.08.2023* which has been brought into force w.e.f. 01.10.2023.

The above has been made in order to settle all disputes regarding the applicability of clause (a) or (c) in case of 'off the shelf' purchases particularly when the movement of goods is carried by the customer. Whether the same would be categorized as 'movement of goods by the recipient' or 'no movement of goods' at all was a deterrent for determining the correct place of supply. With the above explanation, the sufficiency of the name of the State recorded in the invoice would be the lone factor for knowing the place of supply in case of B2C transactions.

(d) **Where the goods are assembled or installed at site**, the place of supply will be the location of such installation or assembly.

- ✓ It is important to note that assembly or installation as referred to in this clause is not a 'works contract', which has been classified by law as a supply of services (in Paragraph 6(a) of Schedule II to the CGST Act, 2017) – please note that the concept of works contract would arise only in respect of services, for which the place of supply is determined under section 12 and section 13 of the IGST Act, 2017.

- ✓ The supply addressed in this provision refers to only a supply of goods, being a composite supply of goods along with some services, or a mixed supply treated as a supply of goods in terms of sections 2(30), 2(74) and 8 of the CGST Act. In other words, supply from the place of their origin to the site 'for' assembly or installation is subsumed within this provision and merged with the supply to the recipient by virtue of such assembly or installation.
- ✓ This provision appoints the place of supply based on the final act of assembly or installation. There is no requirement to vivisect the entire composite supply of goods (not being works contracts) that is a supply-cum-installation into a supply-plus-installation. If such vivisection were to be done, then in every instance of supply-cum-installation, the supplier will become a 'casual taxable person' in the State where the assembly or installation is required. In other words, when the goods are located in a State (under the control of the supplier which is not registered in that State) and then makes an outward supply directly from where the goods are located, that location becomes the 'place of business' (being the place of storage of goods) of the supplier, making him a casual taxable person in that State. Since, such vivisection is not required to be done, the condition of casual taxable person would not get attracted. It would remain a composite supply of goods from the location of the supplier.

Illustrations:

Section 10(1) (d): Supply of goods assembled/ installed at site.

Particulars	Location of supplier	Registered office of recipient	Installation / Assembly Site	Place of supply	Tax Payable
Installation of weigh bridge	Delhi	Bhopal	Bhopal	Bhopal	IGST payable from Delhi
Servers supplied and installed at an office	Karnataka	Goa	Karnataka	Karnataka	CGST + Karnataka GST payable from Karnataka
Supply of work-stations	Gujarat	Gujarat	Kerala	Kerala	IGST payable from Gujarat

(e) Where goods are supplied on-board a conveyance, the place of supply will be the location at which the goods are taken on-board.

- ✓ Such transactions also cover two supplies – first being the supply of goods 'to' the operator of the conveyance, and second being the supply of such goods as goods or as services, 'by' the operator to the passenger (or any other person), during the journey 'in' the conveyance.

- ✓ The place of supply covered under this clause is in respect of the second limb, and particularly for the supply of goods by the operator of the conveyance during its journey to the passengers. The supply of goods being food or beverages on board a conveyance would be outside the scope of this clause, given that such supply is treated as a composite supply of services in terms of Paragraph 6(b) of Schedule II to the CGST Act, 2017. *Notification No. 13/ 2018-CT(R), dated 26.07.2018* states that supply of food in train/ platform would be taxable at rate of 5% *pari materia* with restaurant services. However, clarity is awaited with respect to the place of supply of such services supplied by IRCTC, whether it is to be considered as restaurant services or goods supplied on board. However, supply of goods like sale of merchandise etc. would be covered under this clause.
- ✓ As per section 2(34) of the CGST Act, the term 'conveyance' includes a vessel, an aircraft and a vehicle
- ✓ The place of supply in respect of first limb of supply will continue to be determined by other provisions of this Chapter and only the second limb of supply 'on-board the conveyance', being a supply of goods, will be determined by this clause.

Illustration:

Section 10(1)(e): Goods supplied on board a conveyance.

Particulars	Location of supplier	Loading of goods	Passenger boards at	Place of supply	Tax Payable
Supply of merchandise on a flight	Punjab	Punjab	Delhi	Punjab	CGST + Punjab GST payable from Punjab
Sale of Power bank during the journey	Pune	Goa	Hyderabad	Goa	IGST payable from Maharashtra
Sale of sunglasses on a ship	Bangalore	Chennai	Cochin	Chennai	IGST payable from Karnataka

(f) **Residuary provision**: Where none of the foregoing provisions are applicable to determine the place of supply in case of a supply of goods, the Central Government may prescribe rules regarding the manner of its determination. Please ensure that before taking recourse to this residuary provision, it must be demonstrated that the supply is one which cannot be covered by any of the clauses (a) to (e) of section 10(1).

10.3 Issues and concerns

Consider a case of delivery ex-factory. In such a case, a question may arise as to whether the

supply involves movement of goods. However, considering that clause (a) specifies that the movement may be by the supplier or the recipient or any other person, it can be inferred that even a supply with an ex-factory delivery would be considered to be a supply involving movement of goods. The law does not provide the meaning of the phrase "terminates for delivery". Delivery may be physical, constructive, implied or in any other form. A plain reading of this clause suggests that the delivery is completed ex-factory, and accordingly, ex-factory supplies would always be intra-State supplies (unless the supplier or recipient is an SEZ).

However, on making thorough study of the law, i.e. section 10(1)(a); section 2(2) which defines "address of delivery" as the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both; section 2(3) defines "address on record" as the address of the recipient as available in the records of the supplier; section 2(93) defines "recipient" of supply of goods or services or both; and section 2(96) defines "removal" in relation to goods, suggest that in case of ex-factory sale or counter-sale, the delivery of goods done by the supplier or taken by the recipient would terminate at the registered place or address on record mentioned in the tax invoice. As such, it can be inferred that if the delivery of goods is taken ex-factory or on counter sale by the recipient such supply would be chargeable to tax based on the address mentioned in the tax invoice.

An alternative view is possible – it may be noted that the delivery for the purpose of the contract law and delivery indicated by this clause may be different. For the purpose of the GST law, a supply is effected on removal of goods for delivery, whereas for contract law, the supply may be understood (in terms of an agreement) to be completed only on acceptance of such goods by the recipient. Similarly, while the risks and rewards pertaining to the goods being supplied may pass at the factory gate, the movement for delivery of such goods may stand terminated only at the premises of the recipient, considering that the movement is undertaken by the recipient for delivery at his own premises. 'Where the movement terminates for delivery to the recipient' should be read very strictly and only refers to the destination at which the movement finally terminates.

Over-the-counter sales are also confused with supply not involving movement. Whether the movement is over long distances or tiny distance from one end of the counter-top to other end, since the enjoyment of the goods supplies is on 'as is where is', this is also a supply that involve movement. Such sales will come within 10(1)(a) and be subject to CGST-SGST unless they are effected under 10(1)(b) then, they will be eligible to levy of IGST where customers from outside the State come and make OTC purchases.

Statutory provisions

11. Place of supply of goods imported into, or exported from India

The place of supply of goods, —

(a) imported into India shall be the location of the importer;

(b) exported from India shall be the location outside India.

Related Provisions of the Statute:

Statute	Section / Rule	Description
CGST	Section 2(56)	Definition of 'India'
IGST	Section 2(5)	Definition of 'export of goods'
IGST	Section 2(10)	Definition of 'import of goods'
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 10	Place of supply of goods other than goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
IGST	Section 16	Zero-rated supplies

11.1 Analysis

Place of Supply – Supplies outside India

Place of supply of goods where the goods are imported into or exported from India will be determined in accordance with section 11 of the IGST Act. Export of goods is defined in section 2(5) of the IGST Act and import of goods is defined in section 2(10) of the IGST Act. With these definitions, which are with reference to the movement of goods and not the location of the supplier or recipient, in this case, the place of supply will be:

2(5)-"export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

2(10)-"import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

(a) In the case of import of goods, the location of the importer and

(b) In the case of export of goods, the location outside India where the goods are exported.

While payment in convertible foreign exchange is for services including transactions involving goods treated as services, the same is not a criterion for determining whether a supply of goods is an export of goods or import of goods. Transactions of merchanting trade – where the goods are procured from one country and are directly dispatched without their entering into India, will not be a supply in the 'taxable territory' of India. Such transactions will be included for a financial effect in the books of accounts, without invoking the levy provisions under the GST laws. Another form of international supply commonly known as High Sea Sales (known as 'HSS') is also a transaction that transpires outside the taxable territory and accordingly, does not attract the incidence of GST. Re-import of export goods will, however,

be liable to GST. It is interesting to note that 'location of supplier or recipient' are not relevant in this section.

'HSS' of imported goods is a term used to denote a transaction whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. Since all transactions entered within the territory of India for sale and purchase of goods is taxable under GST, there were doubts on the levy of GST on 'HSS'. More so, when such 'HSS' were categorised as inter-State supplies. Accordingly, the Government clarified the position of levy of GST on 'HSS' vide *Circular No. 33/ 2017-Cus dated 01.08.2017* – that IGST on 'HSS' transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. In other words, the buyer of 'HSS' shall be disposing IGST on such imports and as part of Customs. Further, value addition accruing in each such 'HSS' shall form part of the value on which IGST is collected at the time of clearance i.e., buyer shall pay IGST on the final purchase value as per last High Sea transaction envisaging all margins earned by all persons who made 'HSS' of such goods.

The law makers prudently redressed such provision in law and suitably has brought in an amendment (mentioned hereinafter) through insertions in Clause 7 and 8 in Schedule III to consider such activities to be neither supply of goods nor supply of services.

The following Circulars are relevant to note:

Circular No. 46/2017-Cus, dated 24.11.2017 regarding in-bond sales makes it explicitly clear that IGST is not applicable until bill of entry for home consumption is filed.

Circular No. 3/1/2018-IGST, dated 25.05.2018 regarding applicability of Integrated Goods and Services Tax (integrated tax) on goods supplied while being deposited in a customs bonded warehouse – wherein it is clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption.

CGST (Amendment) Act, 2018 dated 29.08.2018 (Earlier effective from 01.02.2019 now made effective retrospectively from 01.07.2017 vide *The Finance Act, 2023* notified through *Notification No. 28/2023-CT dated 31.07.2023* and brought into force w.e.f. 01.10.2023): Schedule III to CGST Act, 2017 to insert following entries, namely-

- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
- Supply of warehoused goods to any person before clearance for home consumption;
- Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Therefore, these transactions will neither be treated as supply of goods nor supply of services.

Please note that imports will be liable to IGST in addition to Basic Customs Duty and exports will be zero-rated with benefit of refund of attributable input tax credit, or refund of tax paid on such exports. Please refer to the Taxation Amendment Act, 2017 for the necessary amendments made to Customs Tariff Act, 1975 and Central Excise Act, 1944 to enable imposition of BCD+IGST on import of goods liable to tax. Refer detailed discussion under section 5 of IGST Act on these implications.

Illustrations: Place of supply of goods imported into, or exported from India

Section 11(a): Import of goods

Case	Location of supplier	Location of goods before supply	Goods supplied to	Location of recipient	Place of supply
1	Thailand	Thailand	Assam	Assam	Assam
2	China	China	Kashmir	Haryana	Haryana
3	Sri Lanka	Sri Lanka	Kerala	Kerala	Kerala
4	Karnataka	Iran	Dubai	Karnataka	Not an import since the goods is not brought into India.

Section 11(b): Export of goods

Case	Location of supplier	Location of goods	Goods supplied to	Location of recipient	Place of supply
1	Assam	Assam	Thailand	Assam	Thailand
2	Tamil Nadu	Kashmir	China	Texas	China
3	Sri Lanka	Kerala	Sri Lanka	Sri Lanka	Sri Lanka
4	Maharashtra	Dubai	Iran	Iran	Not an export since the goods is not moving from India.

Another aspect to be carefully considered here is 'bill to-ship to' arrangements involving cross-border trade. It is not important as the supply is 'billed to' a person outside India but the supply is 'shipped to' a person outside India. In fact, it is not at all relevant where the billing is done 'to' for the transaction to come within the operation of section 11. Reference may be had to discussion under section 16 regarding 'supply by way of export' which qualifies for zero-rated benefit. It is sufficient to mention here that in the export – goods shipped to a place outside India – would qualify as an export eligible for zero rated benefit for the second leg of transaction. Exports, therefore, are always determined based on their 'ship to' location being a place outside India. Similarly, import of goods also are determined based on the 'ship to' location being the place within India with a journey or originating outside India. However, with

the *proviso* to section 5(1) imposing GST is not under the IGST Act but under the Customs Tariff Act, as soon as the goods supplied qualify as import of goods under section 11, they attract the incidence of additional customs duty equivalent to IGST. It is important to note that the similarity in the definition of import of goods and export of goods and the dissimilarity in the treatment of GST in these cases.

Statutory provisions

12. Place of supply of services where location of supplier and recipient is in India

(1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.

(2) The place of supply of services, except the services specified in sub-sections (3) to (14)-

(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be, –-

(i) the location of the recipient where the address on record exists; and

(ii) the location of the supplier of services in other cases.

(3) The place of supply of services, –-

(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or

(c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation. –-Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

(5) The place of supply of services in relation to training and performance appraisal to, —

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location where the services are actually performed.

(6) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

(7) The place of supply of services provided by way of, —

(a) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or

(b) services ancillary to organization of any of the events or services referred to in clause (a), or assigning of sponsorship to such events, —

(i) to a registered person, shall be the location of such person;

(ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of services by way of transportation of goods, including by mail or courier to, —

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

[11][~~Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods~~]

(9) The place of supply of passenger transportation service to, —

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[11] Inserted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 through Notf No. 1/2019-IT dt. 29.01.2019. However, omitted vide the Finance Act, 2023, notified through Notfn No. 28/2023-CT dt. 31.07.2023- Brought into force w.e.f, 01.10.2023.

(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 accordance with the provisions of sub-section (2).

Explanation.—For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

(10) The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(11) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall, —

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;

(c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, —

(i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or

(ii) by any person to the final subscriber, be the location where such pre-payment is received or such vouchers are sold;

(d) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(12) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

(13) The place of supply of insurance services shall, —

(a) to a registered person, be the location of such person;

(b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

(14) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Extract of the IGST Rules, 2017

***3**. The proportion of value attributable to different States or Union territories, in the case of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority, under sub-section (14) of section 12 of the Integrated Goods and Services Tax Act, 2017, in the absence of any contract between the supplier of service and recipient of services, shall be determined in the following manner namely:—*

(a) In the case of newspapers and publications, the amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in a State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in such State or Union territory.

Illustration: ABC is a government agency which deals with the all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue

invoices to ABC indicating the amount to be paid by them. ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper. The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the State of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State wise and Union territory wise invoices based on the editions.

(b) in the case of printed material like pamphlets, leaflets, diaries, calendars, T shirts etc, the amount payable for the distribution of a specific number of such material in a particular State or Union territory is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of one lakh pamphlets (at a total cost of one lakh rupees) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States i.e., Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is twenty thousand, fifty thousand and thirty thousand respectively. This breakup should be indicated in the print order. The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup i.e., 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State wise by GH to ABC indicating the value pertaining to that State i.e., twenty thousand rupees-Haryana, fifty thousand rupees-Uttar Pradesh and thirty thousand rupees-Rajasthan.

(c) (i) in the case of hoardings other than those on trains, the amount payable for the hoardings located in each State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in each such State or Union territory, as the case may be.

Illustration: ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the four metros i.e., Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city wise, location wise breakup of the amount payable for such hoardings. The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in

each of the four metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State wise and Union territory wise by IJ to ABC indicating the value pertaining to that State or Union territory.

(ii) in the case of advertisements placed on trains, the breakup, calculated on the basis of the ratio of the length of the railway track in each State for that train, of the amount payable for such advertisements is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: ABC places an order on KL for advertisements to be placed on a train with regard to the "Janani Suraksha Yojana". The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in. The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory. If this ratio works out to say 0.5:0.5: 2:2 :3:3:1 , and the amount to be paid to KL is one lakh twenty thousand rupees, then KL will have to calculate the State wise and Union territory wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory. In the given example the State wise and Union territory wise breakup works out to Delhi (five thousand rupees), Haryana (five thousand rupees), Uttar Pradesh (twenty thousand rupees), Madhya Pradesh (twenty thousand rupees), Maharashtra (thirty thousand rupees), Karnataka (thirty thousand rupees) and Goa (ten thousand rupees). Separate invoices will have to be issued State wise and Union territory wise by KL to ABC indicating the value pertaining to that State or Union territory.

(d) (i) in the case of advertisements on the back of utility bills of oil and gas companies etc., the amount payable for the advertisements on bills pertaining to consumers having billing addresses in such States or Union territory as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory.

(ii) in the case of advertisements on railway tickets, the breakup, calculated on the basis of the ratio of the number of Railway Stations in each State or Union territory, when applied to the amount payable for such advertisements, shall constitute the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: ABC has issued a release order to MN for display of advertisements relating to the "Ujjwala" scheme on the railway tickets that are sold from all the

Stations in the States of Madhya Pradesh and Chattisgarh. The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in. Let us assume that this ratio is 713:251 and the total bill is rupees nine thousand six hundred and forty. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to seven thousand one hundred and thirty rupees and two thousand five hundred and ten rupees respectively. Separate invoices will have to be issued State wise by MN to ABC indicating the value pertaining to that State.

(e) in the case of advertisements over radio stations the amount payable to such radio station, which by virtue of its name is part of a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Illustration: For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcasted on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations. The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued State wise and Union territory wise by MN to ABC based on the value pertaining to each State or Union territory.

(f) in the case of advertisement on television channels, the amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely:—

(i) the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;

(ii) the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;

(iii) where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;

(iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Illustration: ABC issues a release order with QR channel for telecasting an advertisement relating to the "Pradhan Mantri Kaushal Vikas Yojana" in the month of November, 2017. In the first phase, this will be telecasted in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under—

I. QR will ascertain the viewership figures for their channel in the last week of September, 2017 from the Broadcast Audience Research Council. Let us assume it is one lakh for Delhi and two lakhs for the region comprising of Uttar Pradesh and Uttarakhand and one lakh for the region comprising of Bihar and Jharkhand;

II. since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census;

III. by applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand and consequently the ratio of these viewership figures can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9: 1. When this ratio is applied to the viewership figures of two lakhs for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to one lakh eighty thousand and twenty thousand respectively;

IV. in a similar manner the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of one lakh for this region, the viewership figure for Bihar and Jharkhand works out to eighty thousand and twenty thousand respectively;

V. the viewership figure for each State works out to Delhi (one lakh), Uttar Pradesh (one lakh eighty thousand), Uttarakhand (twenty thousand), Bihar (eighty thousand) and Jharkhand (twenty thousand). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).

VI. this ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is twenty lakh

rupees, the State wise breakup is five lakh rupees (Delhi), nine lakh rupees (Uttar Pradesh) one lakh rupees (Uttarakhand), four lakh rupees (Bihar) and one lakh rupees (Jharkhand). Separate invoices will have to be issued State wise and Union territory wise by QR to ABC indicating the value pertaining to that State or Union territory.

(g) in the case of advertisements at cinema halls the amount payable to a cinema hall or screens in a multiplex, in a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Illustration: ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the States of Tamil Nadu and Telengana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State wise and Union territory wise by ST to ABC indicating the value pertaining to that State.

(h) in the case of advertisements over internet, [12][the service shall be deemed to have been provided all over India and], the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the internet subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely: —

(i) the internet subscriber figures for a State shall be taken from the figures published in this regard by the Telecom Regulatory Authority of India;

(ii) the figures published for the last quarter of a given financial year shall be used for calculating the number of internet subscribers for the succeeding financial year and at the beginning, the figures for the last quarter of financial year 2016-2017 shall be used for the succeeding financial year 2017-2018;

(iii) where such internet subscriber figures relate to a region comprising of more than one State or Union territory, the subscriber figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures;

(iv) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for this service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

[12] Inserted vide Notf. No. 04/2018-IT dt. 31.12.2018 w.e.f. 01.01.2019.

Illustration: ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the State wise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are twenty two service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas. In order to calculate the State wise breakup, first the State wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State wise ratio of internet subscribers. Let us assume that this works out to 8: 1 : 2… and so on for Andhra Pradesh, Arunachal Pradesh, Assam….. and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State wise and Union territory wise by WX to ABC indicating the value pertaining to that State or Union territory.

(i) in the case of advertisements through short messaging service the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the telecommunication (herein after referred to as telecom) subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-

(a) the number of telecom subscribers in a telecom circle shall be ascertained from the figures published by the Telecom Regulatory Authority of India on its website www.trai.gov.in;

(b) the figures published for a given quarter, shall be used for calculating subscribers for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;

(c) where such figures relate to a telecom circle comprising of more than one State, or Union territory, the subscriber figures for that State or Union territory shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures.

***Illustration-1**: In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.*

***Illustration-2**: The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of*

populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of subscribers for this telecom circle so as to arrive at the State wise figures of telecom subscribers. Separate invoices will have to be issued State wise by the service provider to ABC indicating the value pertaining to that State.

***Illustration-3**: ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to—*

I. obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;

II. obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;

III. this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;

IV. the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State wise by UV to ABC indicating the value pertaining to that State.

***Illustration-4**: The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.*

(d) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

*[13]**[4.** The supply of services attributable to different States or Union territories, under sub section (3) of section 12 of the Integrated Goods and Services Tax Act, 2017 (hereinafter in these rules referred to as the said Act), in the case of-*

[13] *Inserted vide Notification No. 04/2018-IT dt. 31.12.2018, w.e.f. 01.01.2019.*

(a) services directly in relation to immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(b) lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called, and including a houseboat or any other vessel; or

(c) accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(d) any services ancillary to the services referred to in clauses (a), (b) and (c),where such immovable property or boat or vessel is located in more than one State or Union territory, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case may be, shall be determined in the following manner namely:-

(i) in case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property;

(ii) in case of all other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States or Union territories or both, and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory;

(iii) in case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, which shall be determined on the basis of a declaration made to the effect by the service provider.

Illustration 1: A hotel chain X charges a consolidated sum of Rs.30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of

services provided will thus be apportioned as Rs.20,000/- in the Union territory of Delhi and Rs.10,000/- in the State of Uttar Pradesh.

Illustration 2: There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

Illustration 3: A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.]

[14][5*. The supply of services attributable to different States or Union territories, under sub-section (7) of section 12 of the said Act, in the case of-*

(a) services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, including supply of services in relation to a conference, fair exhibition, celebration or similar events; or

(b) services ancillary to the organisation of any such events or assigning of sponsorship to such events,

where the services are supplied to a person other than a registered person, the event is held in India in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case may be, shall be determined by application of the generally accepted accounting principles.

Illustration: An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidated amount of Rs.10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 4,00,000/- in S2.]

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[14] Inserted vide Notification No. 04/2018-IT dt. 31.12.2018, w.e.f. 01.01.2019.

[15][6. The supply of services attributable to different States or Union territories, under sub section (11) of section 12 of the said Act, in the case of supply of services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:-

(a) The number of points in a circuit shall be determined in the following manner:

(i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

(b) the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.

Illustration 1: A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

Illustration 2: A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

Illustration 3: A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.]

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[15] Inserted vide Notification No. 04/2018-IT dt. 31.12.2018, w.e.f. 01.01.2019.

Related Provisions of the Statute

Statute	Section / Rule	Description
CGST	Section 2(2)	Definition of 'address on record'
CGST	Section 2(34)	Definition of 'conveyance'
CGST	Section 2(56)	Definition of 'India'
CGST	Section 2(93)	Definition of 'recipient'
CGST	Section 9	Levy and collection of tax
IGST	Section 2(3)	Definition of 'continuous journey'
IGST	Section 2(6)	Definition of 'export of services'
IGST	Section 2(11)	Definition of 'import of services'
IGST	Section 2(13)	Definition of 'intermediary'
IGST	Section 2(14)	Definition of 'location of the recipient of services'
IGST	Section 2(15)	Definition of 'location of the supplier of services'
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 8	Meaning of 'intra-State supplies'
IGST	Section 10	Place of supply of goods other than goods imported into, or exported from India
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
IGST	Section 14	Special provision for payment of tax by a supplier of OIDAR services

12.1 Important Definitions

(a) Location of recipient of services:

Section 2(14) of the IGST Act, 2017 defines "location of the recipient of services" as:

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient.

(b) Location of the supplier of services:

Section 2(15) of the IGST Act, 2017 defines "location of the supplier of services" as:

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

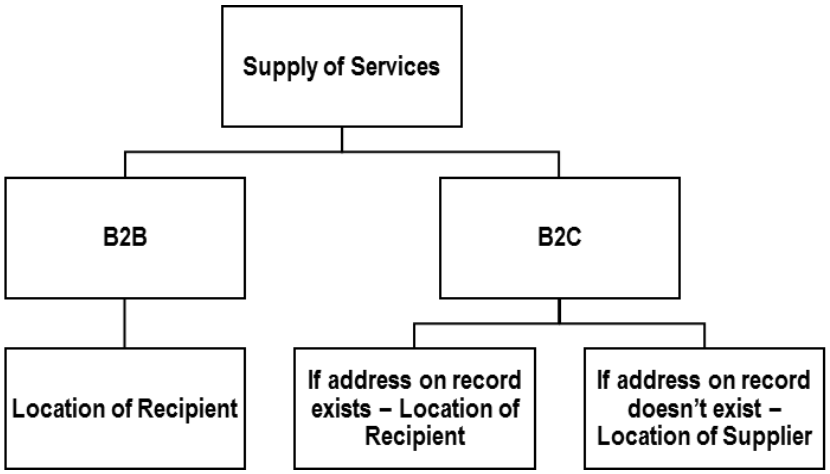
12.2 Analysis

Place of Supply – Supplies within India

Place of supply (known as POS) of services where both the supplier and recipient are located within India will be determined in accordance with section 12 of the IGST Act.

(i) The general provision to determine the place of supply in respect of supply of services will be as follows:

- Services supplied to a recipient who is registered, POS will be the location of such person;
- Services supplied to a recipient who is not registered, POS will be the address on record of such person and where such address is not available, it will be the location of supplier.



There could be a scenario where multiple POS in the same invoice to a particular customer because of supply of distinct goods and goods, or services and services, or goods and services may get covered. In such a case, the supplier has to issue separate invoices where each invoice will have only one POS. This method is also supported by the fact that Form GSTR-1 (Details of Outward supply) does not allow one to key in two different POS for the same invoice.

It is crucial to note that under the erstwhile Service tax regime, the scheme of centralised registration was available, by virtue of which, the location of the recipient was always construed to be the registered address in the statutory records. However, under the GST law, a separate registration is required to be obtained in every State/ UT from where a person effects taxable supplies. Accordingly, due caution must be exercised to provide for what is to be the location of the recipient, where the place of supply is determined to be the location of the registered person, under this clause, or any other clauses of section 12/13 of the IGST Act.

(ii) Specific provisions regarding place of supply that will apply in priority over the aforesaid general provision are as follows:

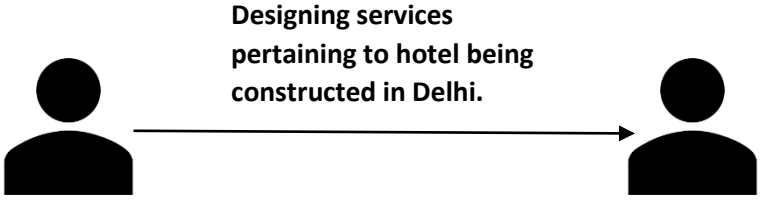
(a) Services directly in relation to immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. The provision lists these services – architects, interior decorators, surveyors, engineers and other related experts or estate agents, grant of rights to use immovable property or carrying out/ coordination of construction work. As can be seen, this list is not exhaustive and therefore – 'in relation to' – test will continue to be applicable to identify the services that will have the location of the property as its place of supply.

Also, the location of the supplier or recipient is irrelevant in such cases. Further, there are other services that have proximity to immovable property that are 'by

way of' accommodation. Such services too have, as their place of supply, the location of such property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The use of such property may be accommodation or for organizing a function such as marriage. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision. It is also stated that in case, the location of immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Circular No. 48/22/2018-GST, dated 14.06.2018 in the context of services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit has clarified that such service shall be treated as inter-State supply.

Further, goods required in construction activity received as stock before being assigned to any particular site will not be determined by this provision but the general provision. For example, steel purchased in bulk and sent to a central warehouse being deployed to any specific site.



POS would be Delhi as the location of immovable property is Delhi.

Rule 4 of IGST Rules provides that where immovable property or boat or vessel is located in more than one State or and in the absence of any contract or agreement, the value shall be determined in the following manner-

a) in case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such property is a single property located in two or more contiguous States/ UT) and services ancillary to such services, the supply of services shall be treated as made in each of the respective States/ UT, in proportion to the number of nights stayed in such property;

b) in case of all other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States/ UT, and services ancillary to

such services, the supply of services shall be treated as made in each of the respective States/ UT, in proportion to the area of the immovable property lying in each State/ UT;

c) in case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services shall be treated as made in each of the respective States/ UT, in proportion to the time spent by the boat or vessel in each such State/ UT, which shall be determined on the basis of a declaration made to the effect by the service provider.

*Circular No. 203/15/2023-GST dated 27.10.202*3 has been issued clarifying the place of supply in case of supply of services in respect of advertising sector and co-location services.

A. Place of supply in case of supply of services in respect of advertising sector

(i) Place of supply where there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure:

The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a), the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located.

Hence, place of supply in such case shall be location where such hoarding/ structure is located.

(ii) Place of supply where the vendor himself owns the structure or takes it on rent or rights to use from another person and is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure.

The said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. The vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the vendor to advertising

company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of section 12(2) of IGST Act.

B. Place of supply in case of supply of the "co-location services"

Co-location is a data centre facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.

It has been clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services. (S.No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involve providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

Hence, in such cases, supply of colocation services cannot be considered as the service of renting immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of section 12(3)(a) of the IGST Act but shall be determined by the default provision under section 12(2) of the IGST Act i.e., location of recipient of co-location service.

However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and IT Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and elated hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of section 12(3)(a) of the IGST Act which is the location where the immovable property is located.

(b) In case of services of restaurant and catering, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery will be the location where these services are actually performed. The services listed in this provision do not carry a common thread so as to allow expanding this list. At the same time, each of these services themselves are a broad description of various specific services that may be performed under that umbrella. Services must be examined very carefully to fall with the scope of this provision. It may be noted that only performance-based services which require physical presence can be considered within this clause.

It is important to understand that POS would not help one in determining the State in which registration is required to be obtained, and it only determines the State in which

the supply is consumed, so as to determine the nature of tax applicable on the supply. For understanding registration requirement, one has to determine the same, basis Chapter VI of CGST Act.

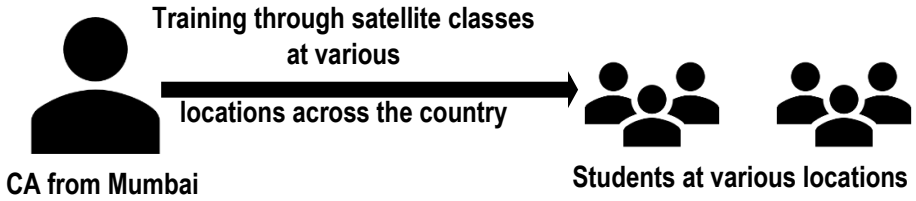


POS would be Kolkata as that is the place where service is performed.

(c) Services of training and performance appraisal supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where services are actually performed.

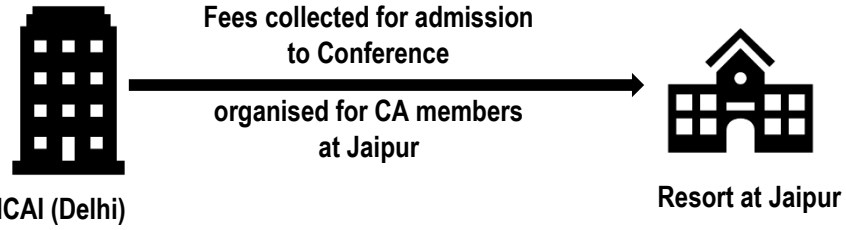
Recipient here being the 'person liable to pay the consideration' is not to be misconstrued to be the 'trainee' or 'person appraised'. E.g.: In case of a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore, the consideration is paid by the corporate through the individual participants who would be required to pay a certain delegate fee. Hence, the POS has to be determined on the basis of location of the recipient being the corporate entity and not based on the place where the services are actually performed.

Had the services been provided to unregistered individual participants, the place of supply would have been Mumbai i.e., where the services are actually performed.



POS would be Mumbai as that is the place where service is performed.

(d) Services of ***admission*** to a venue will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or an amusement park including ancillary services. Services referred to here are only 'admission' and not for organizing the event at the venue. Thereby, event management services would not be covered here but in clause (e) below.



POS would be Jaipur as that is the place where event is actually held.

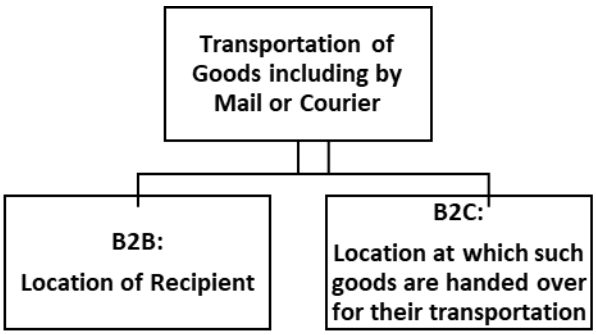
(e) Services of ***organizing*** an event including ancillary services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location of the venue itself.

The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment. Services referred to here are 'by way of' organizing the event at the venue. Where the event is organized in a ground or field being an immovable property, the service of securing the location has, as its place of supply, determined by a foregoing provision but the rest of the services of organizing the event alone will fall in this provision.

Rule 5 of IGST Rules provides that where services of organizing the event are supplied to unregistered person for a consolidated amount charged for supply of such services and the event is held in India in more than one State/ UT, the value of service in such State/ UT shall be determined by application of generally accepted accounting principles.

On a comparison of this provision with the previous provision, the striking difference is that in case of B2B transaction for admission to an event, the POS would be the location of the event whereas services of organizing the event is based on the location of the recipient in case of B2B supplies (i.e., where the recipient is a registered person).

(f) Services of transportation of goods supplied to a registered person will be the location of the recipient being a registered person. When the recipient is not registered, the place of supply will be the location where goods are handed over for such transportation. Transportation of goods may be by any mode including mail or courier.



In order to provide a level playing field to Indian transporters, with effect from 01.02.2019 vide *IGST (Amendment) Act 2018*, a proviso was inserted to provide that where the transportation of goods is to a place outside India and where the location of the supplier and recipient are in India, the place of supply will be the place of destination of goods.

However, services by way of transportation of goods by an aircraft or vessel from customs station of clearance in India to a place outside India was exempt till 30.09.2022.

Hence, w.e.f. 01.10.2022, the logistics company taking goods out of India would always invoice with IGST by showing the place of supply as 'Foreign Country'. The revenue from such supply would not accrue in the favour of the State where the recipient was located. In such cases, the ITC had been called into question by the GST Department. A clarification was issued vide *Circular no. 184/16/2022-GST dated 27.12.2022* that the ITC would be fully available in such cases.

Despite this clarification, the recipient state (i.e., where the exporter is located) would be incurring a loss because it would not receive the revenue from the original supply but still provide ITC benefit to the exporter. To remove this anomaly and confusion regarding ITC availability, the place of supply provisions in relation to domestic transactions where goods are sent outside India, has been omitted vide the *Finance Act, 2023* w.e.f. 01.10.2023. Now, the destination of goods is not relevant where the transportation takes place to a destination outside India.

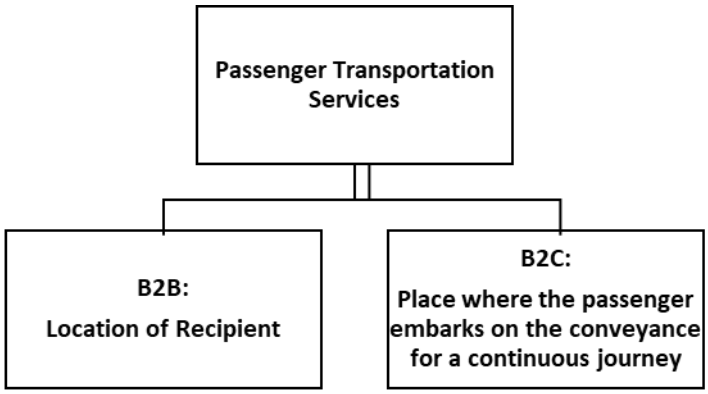
The place of supply even where the destination of goods is outside India would be as follows for the transportation of goods:

(a) Supply to registered person - Location of the registered person

(b) Supply to unregistered person – Location at which such goods handed over for transport

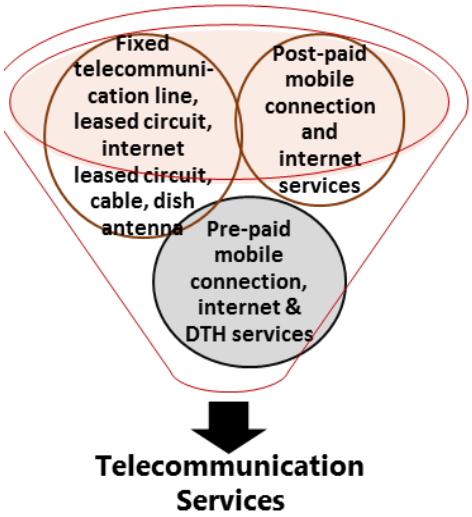
(g) Services of transportation of passenger will be the location of the registered recipient (including where an employee of a registered person travels on business). When the recipient is not a registered person, the place of supply will be the location of embarkation. Please note that a return journey is regarded as a separate journey (even in case of bookings of round-trips).

Where the point of embarkation is unknown (in cases where the right to passage is given for future use) then the place of supply will be determined under the general clause (i.e., Section 12(2) of the IGST Act). This is particularly relevant in case of travel passes enabling multi point travel at the option of the user,



(h) Services supplied on-board a conveyance, will be the first scheduled point of departure of such conveyance. Irrespective of whether the supplies are B2B or B2C, the POS is determined based on the first scheduled point of departure. Please note that by this logic, it is possible that the place of supply is determined to be a place in the route which has passed crossed even before the passenger availing the service embarks the conveyance. The registered recipient receiving any services on board through its employees/ directors would lose the ITC on the said transaction in case the location of the registered recipient and the first schedule point of departure are in two different States.

(i) Telecommunication services are provided in various forms and the place of supply will depend on the mode of providing the services. Where the services involve an in-situ device installed to enable the service, the place of supply will be the location where such device is installed. This device may be a dish antenna, telephone line, etc. Where the services involve portable device, the place of supply will be the billing address if the same is on post-paid basis. Where it is on pre-paid basis, the place of supply will be the location of any intermediary who facilitates the supply or location where payment is received. Where none of the situations provide an appropriate location, then the place of supply will be the address-on-record of the recipient. If address is not available, then the location of supplier will be the place of supply. If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.



Rule 6 of IGST Rules provides that where the leased circuit is installed in more than one State/ UT and consolidated amount is charged for supply of such services, the value of services in each such State/ UT shall be determined in proportion to the number of points lying in the State/ UT. The number of points in a circuit shall be determined in the following manner:

(i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

(j) Banking and financial services including stock broking services will be the location of the address-on-record of the recipient. And if address is not available, then the location of supplier will be the place of supply. The services referred in this provision are not services 'by' a banking or financial institution but services 'of' banking and financial services. As such, the service is to be examined and not the service provider. Classification of services to identify the applicability of this provision is an important exercise that is to be undertaken.

(k) Insurance services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the address of location of the recipient of service on record of the supplier of services. In no case, the address of the recipient would not be present on record with the recipient.

(l) Advertisement services involving 'dissemination' of the material supplied to the Government or a statutory body will be the location of such dissemination. Where it is identifiable to a specific State, then that would be the place of supply and where it is disseminated over number of States, then a rule of proportion or any other reasonable basis is to be applied.

The proportion of value of advertisement services provided to Government, statutory body or local authority shall be determined in the manner laid down in Rule 3 of IGST Rules, 2017, as follows-

1. Advertisements in newspapers and publications: The amount payable for publishing in all the editions of a newspaper published in a State/ UT shall be the value of advertisement service attributable to such dissemination in each such State/ UT.
2. Printed material like pamphlets, leaflets, diaries, t-shirts and the like: Amount payable for the distribution of specified number of such printed material in a State/ UT shall be the value of service attributable to such dissemination in each such State/ UT.
3. Advertisement on hoardings (other than those on trains): The amount payable for the hoardings located in a State/ UT shall be the value of service attributable to such dissemination in each such State/ UT.
4. Advertisements on trains: Value of advertisement service attributable to each State/ UT shall be calculated in proportion to the length of the railway track in each State/ UT for that train.
5. Advertisements on the back of utility bills: Value of advertisement service attributable to each State/ UT shall be the amount payable for the advertisement on the bills pertaining to consumers having billing addresses in such State/ UT.
6. Advertisements on railway tickets: Value of advertisement service attributable to each State/ UT shall be calculated in proportion to the number of railway stations in such State/ UT.
7. Advertisements on radio stations: Value of advertisement services attributable to each State/ UT shall be the amount payable towards the broadcast made in a State/ UT.
8. Advertisements on television channels: Value of advertisement services attributable to each State/ UT in a month shall be calculated proportionately on the basis of number of channel viewership figures published by Broadcast Audience research council for the last week of the immediately preceding quarter. Where the channel viewership figures relate to a region comprising of more than one State/ UT, viewership figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.
9. Advertisements in cinema halls: Amount payable to cinema halls in a State/ UT, shall be the value of advertisement services attributable to each State/ UT.
10. Advertisements over the internet (the service shall be deemed to have been provided all over India): Value of advertisement services attributable to each State/ UT in a month shall be calculated proportionately on the basis of number of

internet subscriber figures published by TRAI for the last quarter of the immediately preceding financial year. Where the internet subscriber figures relate to a region comprising of more than one State/ UT, subscriber figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

11. Advertisements through SMS: Value of advertisement services attributable to each State/UT in a month shall be calculated proportionately on the basis of number of telecom subscriber figures published by TRAI for the immediately preceding quarter. Where the telecom subscriber figures relate to a telecom circle comprising of more than one State/ UT, subscriber figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

(m) Considering that place of supply has been so specifically covered in the various provisions discussed, it is to be borne and recollected that identifying the place of supply is for purposes of determining whether it is an inter-State supply or an intra-State supply. After much resistance to let go of the experience from erstwhile tax laws, it would dawn upon each of us to eschew seeking registration in every state where their services constitute a place of supply, but rather rely upon this section to open the doors to choose to effect inter-state supplies from one (or few) State only instead of multi-state registration that may be necessitated under erstwhile tax laws. Another important aspect especially when a recipient is a registered person which comes out on analysis of section 12 is that wherever the POS is based on location of the recipient, the ITC is intact and wherever the POS is not based on location of the recipient but based on some other criterion as discussed above, then there is high probability of losing out on ITC in the hands of a registered person. Eg: Immovable property related services, admission to an event, services on board an aircraft etc.

Statutory provisions

13. Place of supply of services where location of supplier or location of recipient is outside India

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely: —

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

[16][Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.]

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(5) The place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.

(6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of

[16] Substituted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, notified through Notf No. 1/2019-IT dt. 29.01.2019. Applicable w.e.f. 01.02.2019.

services, namely: —

(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, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation. —For the purposes of this sub-section, the expression, ––

(a) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(b) "banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(c) ''financial institution" shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(d) "non-banking financial company" means, ––

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

[17][(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 such goods~~.]

(10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

(11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

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[17] Omitted vide the Finance Act, 2023 notified through Notf. No. 28/2023-CT dt. 31.07.2023, Brought into force w.e.f. 01.10.2023.

Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely: —

(a) the location of address presented by the recipient of services through internet is in the taxable territory;

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(c) the billing address of the recipient of services is in the taxable territory;

(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Extract of the IGST Rules, 2017

7. *The supply of services attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services, or in the case of services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, shall be taken as being in each of the respective States or Union territories, and the proportion of value attributable to each such State and Union territory in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:-*

(i) in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;

(ii) in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;

(iii) in the case of services supplied to individuals, by applying the generally accepted accounting principles.

Illustration-1: A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

Illustration-2: A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Illustration-3: A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

***8.** The proportion of value attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of supply of services directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 4, mutatis mutandis.*

***9.** The proportion of value attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of the supplier of services or the*

location of the recipient of services is outside India, and where such services are provided in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 5, mutatis mutandis.

Related Provisions of the Statute:

Statute	Section / Rule	Description
CGST	Section 2(3)	Definition of 'address on record'
CGST	Section 2(34)	Definition of 'conveyance'
CGST	Section 2(56)	Definition of 'India'
CGST	Section 2(93)	Definition of 'recipient'
CGST	Section 9	Levy and collection of tax
IGST	Section 2(3)	Definition of 'continuous journey'
IGST	Section 2(6)	Definition of 'export of services'
IGST	Section 2(11)	Definition of 'import of services'
IGST	Section 2(13)	Definition of 'intermediary'
IGST	Section 2(14)	Definition of 'location of the recipient of services'
IGST	Section 2(15)	Definition of 'location of the supplier of services'
IGST	Section 2(17)	Definition of OIDAR services
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 8	Meaning of 'intra-State supplies'
IGST	Section 10	Place of supply of goods other than goods imported into, or exported from India
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and location of recipient is in India
IGST	Section 14	Special provision for payment of tax by a supplier of OIDAR services

13.1 Analysis

Place of supply of services where either the supplier or recipient is located outside India will be determined in accordance with section 13 of the IGST Act. In other words, this provision applies for the determination of export of services as well as for import of services.

International supplies involving services are not verifiable similar to goods. GST, in certain cases, treats supplies involving goods as 'supply of services'. In such cases too, this provision will apply for determination of place of supply of their export and import. Given the definition of export of services and import of services and on comparing them to goods, it will be evident that there is really no comparison. Matters such as location of supplier, location of recipient, currency of compensation, etc., assume importance in relation to services including goods that are treated as supply of services. In this background, we may analyse place of supply of services where either one – supplier or recipient – is located outside India.

Then the place of supply determined by application of this provision may be carried into the definition to determine whether the international supply meets the requirements to be regarded as 'export of services' or 'import of services'. This may be somewhat unnatural but that is the correct approach because location of recipient outside India and payment in foreign currency are tests that the GST law does not appreciate. In this time and age of forex surplus, when two enterprises which are both located within India transacting in foreign currency is not impermissible.

2(6) "export of services" means the supply of any service when

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by Reserve Bank of India ; and

(v) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8;

2(11) "import of service" means the supply of any service, where

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India;

Place of supply of international supplies of services is as follows:

(i) The general provision for determining the place of supply (POS) is that the POS will be the location of the recipient of the services; whereas, it will be the location of the supplier of services if the location of the recipient cannot be known without employing any extraordinary means. 'Recipient' is defined as the 'person liable to pay consideration' in section 2(93) of the CGST Act.

(ii) It is important to note that this section only determines the POS. Merely because the POS is determined under this clause, the supply cannot be regarded as an export of service or an import of service.

(iii) Specific provisions regarding place of supply that will apply in priority over the general provision will be as follows:

(a) POS of services that are 'in respect of' goods made available 'by' recipient 'to' supplier or persons representing supplier for performance of those services will be the location where the services are actually performed. It is worthwhile to note here that the goods must be made available only by the recipient and not his representative but whereas person to whom it is made available could be supplier or his representative. It is also noteworthy that the services to which this provision is to apply are not expressly listed here and left to an application of 'made available for performance' test to determine its applicability. Services that are supplied by remotely accessing the goods, the place of supply will be the location of the goods.

However, the said provisions will not apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. This amendment is made vide IGST (Amendment) Act, 2018, dated 29.08.2018 (effective 01.02.2019)

In cases where services are supplied at multiple locations, including a location in the taxable territory, POS is location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States.

Rule 7 of the IGST Rules provides that the value of services in each such State/ UT shall be determined in the following manner, namely:

(i) in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;

(ii) in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;

(iii) in the case of services supplied to individuals, by applying the generally accepted accounting principles.

(b) Similar to the provisions of section 12(3), the POS in case of services 'directly in relation to' immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. Such property may be a hotel, inn, guest house, homestay, club or campsite excluding houseboat. The end-use will not alter the applicability of this provision but the proximity of the property

vis-à-vis the services. In cases where services are supplied at multiple locations, including a location in the taxable territory, POS is location in the taxable territory. The rule of proportion is to be applied in case the services are carried out in different States. Rule 8 of IGST Rules provides that the value of services in each such State/ UT shall be determined by applying the provisions of rule 4 of IGST Rules, mutatis mutandis.

Services required in construction activity which are received before being assigned to any particular site will not be determined by this provision but the general provision. For example, lease of construction equipment sent to a central warehouse before being deployed to any specific site.

(c) In respect of services of admission to a venue, POS will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or a celebration, conference, fair, exhibition or similar events including ancillary services. Services referred to here are admission or organizing the event at the venue. In cases where services are supplied at multiple locations, including a location in the taxable territory, POS is location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States. Rule 9 of IGST rules provides that the value of services in each such State/ UT shall be determined by applying the provisions of rule 5 of IGST rules, *mutatis mutandis.*

(d) Services in the following three cases deviates from the 'destination' principle and appoints the POS to be the location of the supplier:

- Services by a banking company or a financial institution or NBFC – reference to services 'by' indicate that this specific provision will encompass all activities by such a service provider performed in their capacity as such.
- Intermediary services – defined in section 2(13) provide for a broad set of activities. It is important to examine whether the role of an intermediary is limited in any manner to marketing (proliferation of information to potential customers), pre-sale (submitting quotations) and post-sale (assisting in delivery, installation and after-sales support).

  Intermediary services have been defined to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

  If any outbound services fall within intermediary, it would amount to place of supply being the location of supplier and CGST / SGST is required to be charged. In case of any inbound services from outside India, the supply

would not be taxable at all in India if it falls within intermediary. In this regard *Circular No.159/15/2021 dated 20.09.2021* is issued clarifying scope of Intermediary services. Further, in the case of *Dharmendra M Jani Bombay (HC)*, the final decision of Hon'ble Chief Justice is that the provisions of section 13(8)(b) and section 8(2) of IGST Act are legal, valid and constitutional. Further, it is confined to the operation of IGST Act and cannot be made applicable for levy under CGST Act.

- Hiring of transport for a period upto one month – all services attendant to securing such limited duration. This excludes aircraft and vessel other than yacht.

(e) POS of services of transportation of goods will be the destination of the goods, as opposed to the location where they are handed over for transportation as in case of supplies to unregistered persons in section 12(8). Transportation of goods may be by any mode, but not mail or courier. This has been amended by *Finance Act, 2023* by omitting section 13(9) w.e.f. 01.10.2023. It has been clarified vide *Circular No. 203/15/2023-GST dated 27.10.2023* that POS of transportation of goods services will be determined as per section 13(2). Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services. E.g.: Currently, A transporter registered in Kolkata may provide transportation service in respect of goods owned by a person in Nepal for delivery to another person in Assam. In such a case, although the service is supplied to a person located outside India, the supply will be a taxable supply and will not be considered to be an export of service. From 01.10.2023, POS of the same transaction will be 'recipient's location' i.e., Nepal and subject to fulfilment of other conditions laid down in section 2(6), it shall be treated as export of service.

Further, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.

(f) POS of services of transportation of passenger will be the location where the passenger embarks on the conveyance for a continuous journey.

(g) POS of services supplied on-board a conveyance, will be the first scheduled point of departure. Services are to be supplied during the journey. It includes services which are to be wholly or substantially consumed while on board. Any deviation from this condition will result in it getting classified under the general rule.

(h) POS of services of OIDAR (online information and database access or retrieval) services will be location of recipient. Please refer to detailed discussion under

section 14 on OIDAR services. Further, such recipient will be deemed to be situated in a taxable territory if any two of the following conditions are fulfilled:

- Address of recipient is in taxable territory;
- Card of recipient that is used to pay for the services is issued in taxable territory;
- Billing address is in taxable territory;
- Internet protocol address in taxable territory;
- Bank account of recipient used to make payment is in the taxable territory;
- Country code of SIM card used by recipient is of taxable territory;
- Fixed land line used by recipient is in taxable territory.

(iv) Where there is any occasion for double taxation or non-taxation, the Central Government is empowered to notify the place of supply with respect to service of any specific description, wherein the place of supply will be the place of effective use and enjoyment of a service.

(v) Remarkably, *Circular 118/37/2019-GST dated 11.10.2019* issued to specify POS in respect of Electronics Semi-conductor and Design Manufacturing (ESDM) services where these services are clarified not to be location-based services. And this circular only provide interpretation that should always be applicable to save the incidence of tax.

(vi) Even more remarkable is that Government has issued a notification under section 13(13) to specify POS in respect of clinical trials. Experts are apprehensive that this notification will not have retrospective effect and any exports reported in respect of clinical trials may be questioned now. The summary of the notifications as under:

S. No.	Notification Nos.	Service	Place of Supply
1	04/2019- Integrated Tax dated 30.09.2019	Supply of research and development services related to pharmaceutical sector by a person located in taxable territory to a person located in the non-taxable territory	The place of supply of services shall be the location of the recipient of services subject to fulfilment of certain conditions
2	02/2020- Integrated Tax dated 26.03.2020 w.e.f. 01.04.2020	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	The place of supply of services shall be the location of the recipient of service.

3	03/2021- Integrated Tax dated 02.06.2021	Supply of maintenance, repair or overhaul service in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service

Statutory provisions

14. Special provision for payment of tax by a supplier of online information and database access and retrieval services

(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(b) the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorize delivery; and

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

(2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Related Provisions of the Statute

Statute	Section / Rule	Description
CGST	Section 2(79)	Definition of 'non-taxable territory'
CGST	Section 2(93)	Definition of 'recipient'
IGST	Section 2(13)	Definition of 'intermediary'
IGST	Section 2(15)	Definition of 'location of the supplier of services'
IGST	Section 2(16)	Definition of 'non-taxable online recipient'
IGST	Section 2(17)	Definition of 'OIDAR services'
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 8	Meaning of 'intra-State supplies'
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
CGST	Rule 64	Form and manner of submission of return by persons providing OIDAR services and by persons supplying online money gaming from a place outside India to a person in India

14.1 Introduction

This is a new transaction that is brought within the tax net only from 01.12.2016 under Service Tax. The experience was more than encouraging as the amount of tax that has been collected from OIDAR is in a class of its own as regards taxable person and place of supply. Everything discussed until now must be given a go-bye to understand OIDAR more clearly.

14.2 Analysis

Online Information and database access or retrieval (OIDAR) is defined in a specific manner and may be simplified as follows:

2-step definition	Services (and not goods) supplied
	Delivered over continuous internet connectivity
2-step clarification	Involves minimal human intervention *[This condition has been omitted vide Finance Act, 2023 w.e.f. 01.10.2023]*
	Impossible to ensure in absence of information technology

Six illustrations in the definition and some explanation about inclusions and exclusions:

Illustration	Includes	Excludes
Online advertising E.g., Google ad	• Banner ads, pop-up ads, sponsored ads, etc.	• Preparation of content for online display like production, distribution and services of intermediaries • Advertise in newspaper, on posters and on television
Cloud services E.g., Amazon Web services	• Webhosting • Data warehousing	• Software license issued by delivery of key number to remotely download via FTP
E-books, movies, music, software and other intangibles E.g., Gaana.com and Netflix	• Access to content permitted only 'online' even if stored in cache on user-end device but not allowing(official) permanent download	• Downloadable e-books, movies, music, etc. which are available for offline viewing without any mandatory e-check of the user credentials • Content provided through dedicated user-end device for use of content • Supply of physical books, newsletter, newspaper or journals • Booking services or tickets to entertainment events, hotel accommodation or car hire • Educational or professional courses, where the content is delivered by a teacher over the internet or electronic network
Online data or information E.g.LinkedIn, Taxindiaonline.com	• Paid websites that provide information • Free sites with valuable information – if not treated as 'supply', ITC will not be available but if treated as 'supply, output tax will apply on like-kind-and-quality or cost-plus basis	• Net banking where banking information is accessed online but merely incidental to offline banking transactions • Electronic commerce • Non-commerce and information portals • C2C portals

Online supply of digital content E.g. Setmax online, YouTube	• TV programs and movies supplied over the internet like monitored by issuing user login / password	• Auditors report sent to client via email. It is merely a form in which the offline service are communicated. Services of auditor is not the email of report issued but the opinion expressed about the financial position of the auditee • Online order processing in respect of offline supply of goods • Services of lawyers and financial consultants who advise clients through email
Data storage E.g. Amazon cloud	• Webservers – shared or dedicated, with/ without support, etc.	• Lease of server with redundancy
Online gaming E.g. Zapak.com	• Live-gaming • Collaborative gaming	• Computer/ mobile games to be used after downloading to user-end device

Thus, every transaction done over the internet is not e-commerce, everything delivered online is not OIDAR. The acid-test is to see 'always on' status of internet connectivity for the continuous supply of the underlying service. Mere use of internet for delivery of services that can otherwise be provided offline through some media like CD, pen-drive, etc. all though less-securely will not be OIDAR. The use of file-transfer-protocol (FTP) for delivery of software or music or games is only to ensure integrity in the delivery of these high-volume files and the use of internet for FTP does not become OIDAR.

To summarise, the following table depicts the ingredients prescribed in this section:

Supplier	Supplier of Services in non-taxable territory		
Recipient	B2C (non-taxable online recipient – NTOR)	Intermediary@ (deemed to be recipient and re-supplying to NTOR)	B2B# (all others)
Taxpayer	Overseas supplier	Intermediary	Recipient
Tax Payment	Forward Charge (through representative)	Forward Charge (through Intermediary)	Reverse Charge (by B2B Recipient)

@ issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay

 # B2B may be registered taxable person for any output supply

Note: Non-taxable online recipient means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Vide Finance Bill 2023, to be effective from 1st October, 2023, the definition of "online information and database access or retrieval services" has been modified. After the amendment, the only condition to check for satisfaction of OIDAR is that the supplies are impossible to ensure in absence of IT. Without checking for automation or minimum human intervention, the supplies would be classified as OIDAR if they cannot be supplied without the assistance of information technology. Therefore, the scope of such OIDAR services seems to have been significantly expanded. Whether the scope of OIDAR would now cover every supply which happens over IT (irrespective of the involvement of human intervention) would have to be examined and awaits clarification.

14.3 Issues and concerns

1. The place of supply provisions, in certain cases, is determined to be a place outside the State in which the registered person has obtained registration – such as POS in case of services in relation to immovable property, admission to an event (including educational events), services on board a conveyance (say letting out a laptop on hire during the journey), banking services (where a single bank account is used for various GST registrations across States). In all such cases, the registered person is restricted from availing input tax credits even where the services have been availed in the course or furtherance of business.
2. Section 13(12) provides a deeming fiction whereby the location of the recipient of the OIDAR services is appointed to be in the taxable territory if any two of seven conditions are satisfied. For instance, say the debit card through which payment is made has been issued in Delhi (Condition in clause b), and the IP address is in Bangalore (Condition in clause f), there is no mechanism in place to appoint a single place of supply for the transaction. This could lead to issue as regards the apportionment of tax revenue between States.
3. A supply of OIDAR services by a supplier located in a non-taxable territory to a non-taxable online recipient in India is specifically excluded from a supply on which the recipient is required to discharge taxes on RCM basis. Accordingly, non-taxable online recipients are not required to obtain registration. The recipients being non-taxable persons, may not be in possession of any documents including the invoices issued by the suppliers, since they are not mandated under any law to keep/ maintain such documents. This would make it extremely difficult for the revenue authorities to identify suppliers of OIDAR services located in a non-taxable territory, and even where identified, to track such suppliers.

Statutory provisions

[18][14A. Special provision for specified actionable claims supplied by a person located outside taxable territory.

(1) A supplier of online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017.), not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.

(2) For the purposes of complying with provisions of sub-section (1), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in sub-section (2) of section 14 of this Act:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

(3) In case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000 (21 of 2000), any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.]

14A.1 Analysis

Section 14A has been inserted in the IGST Act to provide for the levy of IGST on suppliers situated outside the taxable territory for the supply of online money gaming to the persons located within the taxable territory.

A supplier of online money gaming located in a non-taxable territory shall be liable to pay IGST on the supply of online gaming by him to a person in taxable territory. Such supplier shall obtain a single registration under the Simplified Registration Scheme as referred to in section 14(2). Alternatively, any person located in the taxable territory representing such an overseas supplier in the taxable territory can obtain the registration and pay IGST on behalf of

[18] Inserted vide IGST (Amendment) Act, 2023 dt. 18.08.2023, notified through Notf. No. 2/2023-IT dt. 29.09.2023- Brought into force w.e.f. 01.10.2023.

the supplier. If the supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, then he shall appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for payment of such tax.

If the supplier or a person appointed by such supplier or both fails to comply with above provisions, then his website shall be liable to be blocked for access by the public. The provisions of blocking the website access to the public on non-compliance with the provisions of GST law would have an over-riding effect on the provisions of section 69A of the Information Technology Act, 2000 which provides scenarios where access to the information on a computer resource can be blocked by the Government for the public. This overriding effect of GST law on such services means that where such supplier does not comply with the provisions of the GST law, access to his website can be restricted for the public even if the same is not liable to be restricted as per the provisions of the Information Technology Act.

Chapter 6
Refund of Integrated Tax to International Tourist

Statutory provisions

15. Refund of integrated tax paid on supply of goods to tourist leaving India

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation.–For the purposes of this section, the term "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

15.1 Introduction

Outbound passengers leaving India accompanied by GST-paid goods received during their stay in India would result in India exporting its taxes and this is sought to be overcome.

15.2 Analysis

"tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

All outbound passengers carrying goods on which IGST has been paid are entitled to claim refund at the port-of-exit. It is likely that the verification will be simple and refund will be online. It is interesting to note that only 'integrated tax' is eligible for this refund. Also, as per proviso to section 8(1), all supplies to such an outbound tourist will always be treated as inter-State supply. The challenge to supplies-to-tourist's is to identify an outbound tourist and charge IGST instead of CGST/SGST of the State where the goods are delivered. Please note that person seeking such refund must be a 'tourist' – who has entered India for genuine non-immigrant purposes. 'Purpose' of visit to India is key factor to be examined. Nationality, residency for tax purposes, etc. are irrelevant considerations. The provision of this section has not been made applicable as of now. Detailed inclusions and exclusions can be expected in due course but few illustrations may be considered.

Tourist will exclude:

- Person resident in India (not limited to Indian passport holders) who are exiting India for any purpose whether for short duration or long duration or uncertain duration.
- Deputation of Indian resident to overseas diplomatic postings.

- Children born in India to foreign nationals during their stay in India.

Tourist will include the following:

- Crew of an international conveyance entering and exiting India within short duration even though not for purposes of tourism in India
- Foreign diplomatic visitors on official duty in India
- Foreign sports persons visiting India for participating in tournaments or training purposes
- Foreign journalist and camera crew visiting India in connection with their profession
- Foreign artists, musicians and actors visiting India to perform in shows or content production

The Indian government is currently working on implementing a procedure for foreign tourists to obtain GST refunds for their purchases of goods and services in the country.

Chapter 7
Zero Rated Supply

Statutory provisions

16. Zero Rated Supply

(1) "Zero rated supply" means any of the following supplies of goods or services or both, namely: —

(a) export of goods or services or both; or

(b) supply of goods or services or both [19][for authorized operations] to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

[20][(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non- realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under

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[19] Inserted vide the Finance Act, 2021, notified through Notf. No. 27/2023-CT dt. 31.07.2023-Brought into force w.e.f. 01.10.2023

[20] Substituted vide the Finance Act, 2021, notified through Notf. No. 27/2023-CT dt. 31.07.2023- Brought into force w.e.f. 01.10.2023 for

"(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: —

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedures as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder."

the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.]

Related provisions of the Statute

Section or Rule	Description
Section 2(47)	Definition of 'Exempt Supply' (CGST)
Section 54	Refund of tax (CGST)
Section 2(5)	Definition of 'Export of Goods' (IGST)
Section 2(6)	Definition of 'Export of Services' (IGST)
Section 2(19)	Definition of 'Special Economic Zone' (IGST)
Section 2(20)	Definition of 'Special Economic Zone Developer' (IGST)
Section 2(23)	Definition of 'Zero Rate Supply' (IGST)
Section 7	Inter-State supply

16.1 Introduction

Exports have been the area of focus in all policy initiatives of the Government for more than 30 years. Now with the Make in India initiative, exports continue to enjoy this special treatment because exports should not be burdened with domestic taxes. On the other hand, GST demands that the input-output chain not be broken and exemptions have a tendency to break this chain. Zero-rated supply is the method by which the Government has approached to address all these important considerations.

16.2 Analysis

Zero-rated supply does not mean that the goods and services have a tariff rate of '0%' but the recipient to whom the supply is made is entitled to pay '0%' GST to the supplier. In other words, as it has been well discussed in section 17(2) of the CGST Act that input tax credit will not be available in respect of supplies that have a '0%' rate of tax. However, this disqualification does not apply to zero-rated supplies covered by this section. It is interesting to note that section 7(5) (and even proviso to section 8(1)) declares that supplies 'to' or 'by' SEZ developer or unit will be treated as an inter-State supply. So, when two SEZ units or one SEZ developer and another SEZ unit supply goods or services to each other (among themselves within the zone) and the zone being located within the same State or UT, such supplies will always be inter-State supplies. But it is important to note that this – being treated

as inter-State supplies always – by itself does not mean that non-SEZ sales by SEZ unit will be liable to IGST in all cases. Please refer to the table below of supplies involving suppliers in the zone that is covered by the provisions of section 7(5) and proviso to section 8(1):

Supply 'by'	**Supply 'to'**
SEZ unit	Outside India
SEZ unit	Another SEZ unit
SEZ developer	SEZ unit
Non-SEZ unit	SEZ unit
SEZ unit	Non-SEZ unit
Non-SEZ unit	SEZ developer
SEZ developer	Non-SEZ unit

Note: Physical locations within the political boundaries of a State are irrelevant.

The intention of government not to burden the export with tax could be achieved either by allowing not to charge tax on the exports of goods/services and claim the refund of input tax credits of taxes paid on inward supplies or by allowing the refund of tax charged on the exports made. Both these alternatives have been enabled in this section. Zero-rated supplies may be undertaken in either of the following ways:

<table>
<tr><td colspan="2">Taxable person to avail input tax credit used in making outward supply of goods or service or both and make zero-rated supply-</td></tr>
<tr><td>• Without any payment of IGST on such outward supply by executing LUT (Letter of Undertaking) or bond (dispensed off vide Notification No. 37/2017-Central tax)</td><td>• Make payment of IGST on the outward supply by debiting 'electronic credit ledger' but without collecting this tax from the recipient</td></tr>
<tr><td>• Claim refund of input tax credit used in the outward supply</td><td>• After completing the outward supply, claim refund of the IGST so debited (unjust enrichment having been duly satisfied)</td></tr>
<tr><td colspan="2">Subject to fulfilment of all associated conditions and safeguards that may be prescribed in either case</td></tr>
</table>

- Physical exports are well understood due to the vast experience from Customs Act. Physical exports, as discussed under section 11, are not determined or defined by realization of foreign exchange (unlike export of services). SEZ is defined in section 2(20) to have the meaning from 2(g) of SEZ Act, 2005. Supply of goods by SEZ to non-SEZ area is governed by Customs Act in terms of rule 47 in Chapter V of SEZ

Rules, 2006. Accordingly, although the supply is 'treated as inter-State supply of goods' in terms of section 7(5), no tax is to be charged by the SEZ supplier but instead, the non-SEZ recipient is to pay IGST at the time of assessment of the bill of entry filed for such goods in terms of Customs Tariff Act, 1975 duly amended by the Taxation Laws Amendment Act, 2017 wherein section 3 of the Customs Tariff Act, 1975 has been substantially altered to enable imposition of additional customs duties only on goods not subsumed into GST and for the imposition of IGST on goods subsumed into GST by sub-section 7, 8 and 9. However, with respect to supply of services by SEZ to non-SEZ area, though not prohibited, is not expressly dealt with by this Chapter V of SEZ rules as to the taxes/ duties applicable. To draw the relevant inference, one should observe the definition of India as per section 2(56) of CGST Act. It has been defined to mean territory of India as referred to in Article 1 of the Constitution. SEZ units are also covered within above definition of India. As the CGST and IGST Act extend to whole of India, it could be said to be applicable to SEZ unit also and thereby making SEZ unit as falling within definition of taxable territory. If this view is taken, it may very simply be an inter-State supply of services liable to payment of IGST on forward charge basis by the SEZ unit because there is no reference in IGST to borrow the operation of section 53 from SEZ Act. Reverse charge *Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017* covers any services supplied by any person who is located in a non-taxable territory to any person located in the taxable territory under reverse charge mechanism. SEZ unit may be said to be falling within definition of taxable territory and liable to tax under forward charge.

Accordingly, certain examples have been discussed below:

These provisions of zero-rated supplies are introduced in the statute on the basis of the prevalent Central Excise and Service Tax laws. It is widely believed that introduction of this provision will alleviate the difficulty of a supplier who exempts goods or services or both in terms of export competitiveness. This provision also specifically expresses that taxes are not exported. Care must be exercised that while paying taxes, such taxes are not collected from the recipient of goods or services or both. This would result in unjust enrichment.

The following illustrations may be considered:

Table A – Physical Exports

Zero-rated supply (Physical exports)	**Option A** (without payment of IGST)	**Option B** (with payment of IGST)
ABC from Chennai supplies goods required by PQR in Delhi to effect exports to Germany	• ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for	• ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue, invoice for

	€15 • PQR to ensure no IGST is charged in the Euro invoice • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100/- being maximum amount related to the outward export supply • Such refund to be claimed by filing Form GST RFD-01	€15 • IGST to be charged on tax invoice issued in INR meant only for the purpose of GST. • PQR to debit electronic credit ledger with IGST applicable of Rs.180/- on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to bring proof-of-export and satisfy all other conditions prescribed • Refund of Rs. 180/- to be allowed on automatic processing of shipping bill by Customs once GSTR-3 and EGM is filed (Rule 96 of the CGST Rules to be followed)
XYZ from Delhi supplies services required by PQR in Delhi to effect export of services to USA	• XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for $20 • PQR to ensure no IGST is charged in the USD invoice • PQR to bring proof-of-export and satisfy all other conditions prescribed including realisation of consideration in foreign currency	• XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for $20 • IGST to be charged on tax invoice issued in INR meant only for the purpose of GST. PQR to debit electronic credit ledger with IGST applicable of Rs. 300/- on the export • PQR to bring proof-of-export and satisfy all other conditions prescribed

	• PQR to claim refund of input tax credit of Rs.250 being maximum amount related to the outward export supply by filing refund claim in Form GST RFD-01	• PQR to claim refund of IGST paid in respect of export.

Table B – Supply 'to' SEZ

Zero-rated supply (supply 'to' SEZ)	**Option A** (without payment of IGST)	**Option B** (with payment of IGST)
ABC from Hyderabad supplies goods required by PQR in Kolkata for onward supply to XYZ in Kolkata-SEZ (for use in authorized operations)	• ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to supply goods to XYZ (SEZ) for Rs.1,500/- • PQR to ensure no IGST is charged in invoice to XYZ • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100 being maximum amount related to the supply to XYZ (SEZ)	• ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue invoice to XYZ (SEZ) for Rs.1,500/- • PQR to debit electronic credit ledger with IGST applicable of Rs.270/- (say, 18%) on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of Rs.270 debited in electronic credit ledger in respect of supply to XYZ (SEZ) • SEZ unit not to avail the credit of IGST paid by PQR [rule 89 (2)] of CGST Rules
XYZ from Surat supplies goods required by PQR in Rajkot for onward	• XYZ to charge CGST/SGST (Rs.250/-) to PQR	• XYZ to charge CGST/SGST (Rs.250/-) to PQR

supply of services to MNO in Ahmedabad-SEZ (for use in authorized operations)	• PQR to avail input tax credit • PQR to supply services to MNO (SEZ) for Rs.2,000/- • PQR to ensure no IGST (even though within same State, it is inter-State supply) is charged in invoice to MNO • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to rule 89 of Refund rules) • PQR to claim refund of input tax credit of Rs.250/- being maximum amount related to the supply to MNO (SEZ)	• PQR to avail input tax credit • PQR to issue invoice to MNO (SEZ) for Rs.2,000/- • PQR to debit electronic credit ledger with IGST applicable of Rs.240/- (say, 12%) on the export • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 89 of CGST Rules) • PQR to claim refund of Rs.240/- debited in electronic credit ledger in respect of supply to MNO (SEZ)

Table C – Supply 'by' SEZ

Zero-rated supply	**Option A**	**Option B**
Supply between two SEZ units:	(without payment of IGST)	(with payment of IGST)
ABC-SEZ in Indore supplies goods manufactured in the zone to PQR-SEZ in Mumbai (for use in authorized operations) Supply by ABC-SEZ to PQR-SEZ is inter-State supply (whether in same State/ UT or in different States/ UTs)	• Goods or services received by ABC-SEZ from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ without any IGST • No input tax credit that needs to be availed by PQR-SEZ • ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other	• Goods or services received by ABC-SEZ from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ. IGST to be charged but not collected from PQR-SEZ. • ABC-SEZ to debit electronic credit ledger with IGST applicable of Rs.240/-. • ABC-SEZ to obtain proof-of-admittance from SEZ

	conditions prescribed. • There is no refund to be claimed either by ABC-SEZ or PQR-SEZ as no IGST has been paid in this chain	officer with assistance of PQR-SEZ and satisfy all other conditions prescribed. • ABC-SEZ to claim refund claim of Rs. 240/- and debit it in electronic credit ledger in respect of supply to PQR (SEZ)
XYZ-SEZ developer in Noida provides lease of premises to MNO-SEZ for its authorized operations. Note: This applies to all supplies by developer to unit – premises lease, premises maintenance and other value added services	• Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ without any IGST • No input tax credit that needs to be availed by MNO-SEZ • XYZ-SEZ to obtain proof-of-receipt of service from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed • There is no refund to be claimed either by XYZ-SEZ or MNO-SEZ as no IGST has been paid in this chain	• Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ. IGST to be charged but not collected from MNO-SEZ. • XYZ-SEZ to debit electronic credit ledger with IGST applicable of Rs.400/-. • XYZ-SEZ to obtain proof-of-receipt of service from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed • ABC-SEZ to claim refund claim of Rs.400/- and debit it in electronic credit ledger in respect of supply to PQR (SEZ)
Supply by SEZ into non-SEZ:		
ABC-SEZ in Gurugram supplies goods to PQR (non-SEZ unit) in Delhi (with necessary non-SEZ supply permission obtained by ABC from	• ABC-SEZ to supply goods to PQR • IGST to be collected by ABC-SEZ to PQR • PQR to file bill of entry	• Nothing to discuss in this option

SEZ officer) Note: All supplies 'by' SEZ is treated as inter-State supply	for import of goods from SEZ to non-SEZ • Bill of entry filed by PQR will be assessed for BCD + IGST • PQR can then claim input tax credit of IGST paid on in bill of entry • PQR to utilize IGST credit	

All refunds are subject to the 'due process' prescribed in section 54 of CGST Act read with Chapter X of CGST Rules including verification of unjust enrichment. Care must be taken not to include the refundable amount in the price charged to overseas customer. This may be checked by looking into:

- If the refundable amount is expensed directly or carried forward as a current asset
- If overseas customer is given credit in any subsequent invoice to the extent of refund
- If the reversal of refundable amount from the credit ledger is charged to P&L or not

Also, all invoices to have a declaration as to –

- Export of goods or services on payment of IGST;
- Export of goods or services without payment of IGST;
- Supplies to a SEZ developer or unit on payment of IGST; or
- Supplies to a SEZ developer or unit without payment of IGST.

Further, all supplies to SEZ developer or unit being zero-rated does not mean that the entire company can enjoy this form of *ab initio* exemption. For example, company incorporated in Delhi may have established a SEZ unit in Jaipur. All goods and services supplied to SEZ in Jaipur will enjoy the *ab initio* exemption but the goods and services supplied to Delhi will be liable to tax. Now, if the incorporated address of the company were also in Jaipur and inside the zone, the company must be cautious to differentiate the supplies that are not related to the authorized operations in the zone but related to the other affairs of the company and instruct the suppliers to charge applicable GST on such non-SEZ supplies. Complete use of this zero-rated exemption will invite recovery action against the SEZ developer or unit. The supplier who supplied as a zero-rated supply is not responsible for this misuse because the SEZ developer or unit would have issued the GSTIN of the zone. Further, in case GST is paid on the non-zone operations of the company and these costs are included in the export billing, there may be some aspects to be taken care of in case post-export refund of this GST paid is sought to be claimed. Please note that all supplies to SEZ developer or unit alone is treated as

an inter-State supply but the supply to the company relating to non-SEZ activities will continue to be inter-State or intra-State supply as the case may be. With all information available online through GSTN, misuse is not difficult to identify. Care must be taken to diligently use the provisions of zero-rated supply.

With regard to 'bill to-ship to' transactions, it is important to mention that though the supply may be 'billed to' person located outside India (for exports) or inside zone (for SEZ supplies), where the supplies are 'shipped to' must be clearly identified in order to qualify for the benefit under this section. It is not that 'exports' are zero rated but 'supply by way of export' are zero rated. There is a lot of difference between these two expressions. With the difference between these two expressions having been discussed in the context of sections 11, it is sufficient to mention here that 'supply by way of export' is a subset of 'exports'. And in order to claim benefit of zero rating under this section, it is important to examine an 'export' to meet the requirements of 'supply by way of export'. In other words, both the 'bill to' and 'ship to' locations must be to the destination – outside India (for exports) or inside zone (for SEZ supplies) – in order to qualify for zero rating benefit. This principle applies equally to supply of goods as well as supply of services for exports.

The above view is best explained through an illustration. Say, a contractor is awarded civil works by a zone-developer and this contractor buys cement from a trader with instructions to deliver the cement directly at site (zone). Now, the supply of cement by trader is 'ship to: zone' but 'bill to: contractor'. Question that arises is, can the cement trader claim zero-rating benefit? The answer is no because the 'bill to' and 'ship to' locations must both be in the zone to satisfy the requirements of section 16 of the IGST Act and rule 89 of the CGST rules.

Even if the goods or service which are either exported or supplied to SEZ unit developer are exempted goods or services, input tax credit is still available for making such zero-rated supplies. The requirement to reverse ITC in relation to exempted supplies is not warranted if it is zero rated. This can also be inferred from Section 16(2) of the IGST Act 2017 which states that the input tax credit is eligible notwithstanding that such supply is exempted.

Section 16 of the IGST Act 2017 allows a person to claim refund under both the options –

a) Zero rated supply of goods or services without payment of IGST

b) Zero rated supply of goods or services with payment of IGST

However, the Government by notification has the power to specify the class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid or the class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid. Except these, all other zero-rated supplies would have to be made without payment of tax under LUT.

Notification No. 1/2023-Integrated Tax dated 31.07.2023 read with *Notification no. 5/2023-Integrated Tax dated 26.10.2023* have been issued to allow -

- all goods or services (except mentioned below) as class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid. and
- all suppliers to Developer or a unit in Special Economic Zone undertaking authorised operations as the class of persons who may make supply of goods or services (except mentioned below) on payment of integrated tax and claim refund of the tax so paid.

The list of such categories of goods or services which may be exported without payment of tax under LUT / bond are provided below:

S. No	***Chapter/Heading/Sub-heading/Tariff item***	***Description of Goods***
(1)	*(2)*	*(3)*
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube) - bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube) - bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
6.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name
12	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco

17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco 'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name
25.	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: — (*a*) Of peppermint (Mentha piperita); (*b*) Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex- mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex- mentha citrate), Mentha arvensis

16.3 Procedure for zero-rated supply of goods or services:

16.3.1. Export of goods or services without payment of Integrated Tax

Exporter of goods is eligible to export goods or services without payment of IGST by complying with the following procedure:

(Note: Same procedures have to be followed by SEZ in respect to export of goods without payment of tax.)

A. Furnishing of Letter of undertaking:

i. *Notification No. 37/2017 dated 04.10.2017* of Central Tax provides for the conditions and safeguards for export of goods or services without payment of IGST which supersedes *Notification No.16/2017 dated 04.07.2017* of Central tax.

ii. Conditions and safeguards for issuing letter of undertaking: all registered persons who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish a Letter of Undertaking in place of a bond except those who have been prosecuted for any offence under the CGST Act, 2017 (12 of 2017) or the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees;

iii. As per *Circular No. 40/14/2018-GST dated 06.04.2018*, the registered person is required to fill and submit Form GST RFD-11 on the common portal. An LUT is deemed to be accepted as soon as an acknowledgement for the same, bearing Application Reference Number (ARN) is generated online. It is further clarified in the aforesaid Circular that no document needs to be physically submitted to the Jurisdictional office for acceptance of LUT.

iv. Letter of undertaking would be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor.

vi. Existing LUT would be valid for the whole of the financial year in which it is tendered. Therefore, every registered person should apply for fresh LUT at the start of each financial year i.e., 1st of April.

vii. Where the registered person fails to pay the tax due along with interest, as specified under sub-rule (1) of rule 96A of Central Goods and Services Tax Rules, 2017, within the period mentioned in clause (a) or clause (b) of the said sub-rule, the facility of export without payment of integrated tax will be deemed to have been withdrawn and when the amount mentioned in the said sub-rule is paid, the facility of export without payment of integrated tax shall be restored.

viii. Where a supplier wishes to effect zero-rated supplies without payment of IGST, the supplier is required to furnish the LUT in Form GST RFD – 11. In terms of Section 16, the LUT should be filed before effecting the zero-rated supplies in order to claim an exemption from payment of taxes. Rule 96A of the CGST / SGST Rules, 2017 provides that LUT should be furnished prior to effecting export of goods / services. It is inferred that if the LUT is not furnished prior to effecting zero rated supplies, the supplier cannot claim exemption on zero rated supplies. In this regard, the Board has issued *Circular No. 37/11/2018–GST dated 15.03.2018* wherein it is clarified that the substantial benefits of zero-rating supplies should not be denied if it is established that the goods or services have been exported in terms of the relevant provisions.

B. Furnishing of RFD-11

i. Rule 96A of CGST Rules provides that any registered person availing option to export goods or services without payment of IGST has to furnish letter of undertaking prior to commencement of export in Form RFD-11. Format of RFD-11 is provided in CGST Rules 2017.

ii. *Circular 26/2017 of Customs dated 01.07.2017* provides that procedure prescribed under rule 96A needs to be followed for export of goods or services w.e.f. 01.07.2017.

iv. Condition to comply:

   a. In case of goods: good to be exported within 3 months from date of issue of invoice

   b. In case of services: Payment to be received in convertible foreign exchange

within 1 year from date of invoice.

v. Bond or LUT has to be furnished along Form GST RFD-11 binding himself that tax along with interest @18% would be liable to paid by him;

   a. In case of goods: within 15 days after completion of 3 months on failure to export such goods.

   b. In case of services: within 15 days of completion of 1 year if such payment is not received in accordance with point (iv).

C. Tax Invoice:

i. Exporters would be required to raise tax invoice with prescribed particulars mentioning "*Supply meant for export under bond or Letter of Undertaking without payment of integrated tax*".

ii. No tax needs to be charged on the invoice in this case.

iii. Tax invoice may be in addition to other export documents provided to customer.

D. Sealing (in case of goods):

Till mandatory self-sealing is operationalized, sealing of containers shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done.

E. Shipping Bill (in case of goods):

i. Shipping Bill format has been revised by customs to capture GST related details.

ii. Shipping bill to be prepared in Form SB-I.

iii. In case of export of duty free goods shipping bills has to be prepared in Form SB-II.

iv. Shipping bill needs to be issued in 4 copies (Original, Drawback purpose, Department purpose and export promotion)

F. Refunds

Refund of taxes in respect of accumulated input tax credit has to be claimed by following procedure prescribed by section 54 of CGST Act read with Chapter X of CGST Rules, 2017.

- Time limit: 2 years from the relevant date
- Method of filing: Form GST RFD-01 in online portal of GST in format provided in CGST Rules 2017 along with the list of documents and information as provided under Circular no. 125/44/2019-GST dated 18.11.2019.
- Provisional refund: Order for sanctioning 90% of refund claim within 7 days by the proper officer subject to certain conditions.

- Details of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) needs to be provided along with details of export invoice while filing Form GST RFD-01

16.3.2. Export of goods or services with payment of Integrated Tax

The procedure to be followed under this option is as follows:

(Note: Same procedures have to be followed by SEZ in respect to export of goods with payment of tax.)

A. Commercial Invoice: Exporter can issue 2 sets of invoices to have a smooth flow of transactions with his foreign customers.

i. Commercial invoice can be issued (along with tax invoice) without showing tax amount.

ii. Points to keep in mind while following practice of issuing commercial invoice along with tax invoice:

- Total value of both the invoices should be equal.
- Every commercial invoice should have a corresponding tax invoice.

B. Tax Invoice:

i. Exporters would be required to raise tax invoice with prescribed particulars mentioning" *Supply meant for export on payment of integrated tax".*

ii. Applicable IGST needs to be disclosed on the invoice in this case.

iii. Tax invoice would be in addition to other export documents provided to customer.

C. Sealing/ Shipping Bill: same as referred above in 16.3.1.

D. Refunds:

a. In case of goods: Rule 96 of CGST Rules provides for the mechanism for refund of tax in case of export of goods with payment of tax.

   i. Shipping bill filed with custom would be considered as application for refund of integrated tax paid on export of goods.

   ii. Refund application shall be valid only when:

      (a) Filing of export manifest/export report by person in charge of the conveyance carrying the export goods.

      (b) Furnishing of valid return in Form GSTR-3 or Form GSTR-3B, whichever is applicable, by the applicant.

   iii. GST and custom portal would be inter-linked in which custom portal would electronically confirm to GST portal about the movement of goods outside India.

   iv. Upon the receipt of the information regarding the furnishing of a valid return Form GSTR-3B, as the case may be from the common portal, the system designated

by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

v. Withheld of refund: Refund can be withheld upon receipt of request from Jurisdictional Commissioner or where customs provisions are violated.

vi. The exporter would not be eligible for refund in case of notified goods where refund of integrated tax is provided to Government of Bhutan.

b. In case of services: Refund of taxes in respect of tax paid has to be claimed by following procedure prescribed by section 54 of CGST Act read with Chapter X of CGST Rules.

- Time limit: 2 years from the relevant date
- Method of filing: Form GST RFD-01 in online portal of GST in format provided in CGST Rules 2017 along with the list of documents and information as provided under *Circular No. 125/44/2019-GST dated 18.11.2019*.
- Provisional refund: Order for sanctioning 90% of refund claim within 7 days by the proper officer subject to certain conditions.
- Details of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) needs to be provided along with details of export invoice while filing Form GST RFD-01.

16.4 Procedure for supplies to SEZ unit/ SEZ developer

Same procedure as referred above in 16.3 can be followed in following cases:

(a) Supply to SEZ without payment of integrated tax

(b) Supply to SEZ with payment of integrated tax.

(Note: Same will be followed in cases the above supplies are made by an SEZ unit or SEZ developer)

16.5 Issues and concerns

1. In terms of section 16 of the IGST Act, 2017 in case of supplies to SEZ developer or SEZ unit / exports in terms of sections 2(5) or 2(6) of the IGST Act, the supplier can either effect supplies on payment of tax, which can subsequently be claimed as a refund. Alternatively, the supplier may effect the supplies without payment of tax under a bond or LUT and is entitled to claim refund of the input tax credit used in effecting such supplies. In this regard, attention is drawn to the fact that the supplier would be disentitled from claiming refund of IGST paid on such supplies effected on payment of IGST (without LUT), if the supplier recovers the amount of tax from the recipients.
2. The time of supply provisions require that tax is remitted on receipt of advances, in respect of supply of services. Consider a case where a supplier of services has

received an advance from a recipient located outside India, in respect of services to be exported. In this regard, it is important to understand whether the LUT should be obtained prior to receipt of advance payment for supply of services, or if it would be sufficient for the registered person to obtain the same before effecting the supply. Rule 96A of the CGST / SGST Rules, 2017 specifies that LUT should be furnished prior to export of services. In terms of rule 96A, the LUT in Form GST RFD – 11 should be furnished to undertake to remit the applicable taxes along interest if the consideration in convertible foreign exchange is not received within one year from the date of issue of invoice. Accordingly, it can be discerned that LUT is not required to be furnished where the consideration in convertible foreign exchange is received in advance. Further, attention is drawn to *Circular No. 37/11/2018–GST dated 15.03.2018* wherein it is clarified that the substantial benefits of zero-rating supplies should not be denied if it is established that the goods or services have been exported in terms of the relevant provisions.

3. Any variation in foreign currency subsequent to the date of time of supply in case of imports and export transaction would not be relevant in the determination of value of taxable supply under section 15. The age old CBEC Circular with the subject "Whether rebate-sanctioning authority may re-determine the amount of rebate in certain cases — Instructions regarding" dated 3.2.2000 also highlight this fact. The C.B.E. & C. has then clarified in their *Circular No. 510/06/2000-Cx, dated 03.02.2000* issued from F. No. 209/29/99-Cx-6 that the rebate sanctioning authority is not required to reassess the value for the export and the value assessed by the range officer on ARE-1 at the time of export has to be accepted. Further, this duty is also not affected by the less realization of export proceeds owing to exchange rate fluctuation and the duty and value has to be on the date, time and place of removal and the exchange rate on that date alone would be applicable. In other words, any exchange gain or loss will remain outside the purview of GST law.

16.6 Related Provisions of the Statute:

Statute	Section / Sub-Section	Description	Remark
CGST	17(2)	Apportionment of credit and blocked credits	Restrictions on credit attributable to exempt supplies.
IGST	2(23)	Zero-rated supply	Adopts the provisions of section 16 of IGST Act

Chapter 8
Apportionment of Tax and Settlement of Funds

17. Apportionment of tax and settlement of funds

17A. Transfer of Certain Amounts

18. Transfer of input tax credit

19. Tax wrongfully collected and paid to Central Government or State Government

Statutory Provisions

17. Apportionment of tax and settlement of funds

(1) Out of the integrated tax paid to the Central Government, —

(a) in respect of inter-State supply of goods or services or both to an unregistered of person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

(b) in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;

(c) in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;

(d) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

(e) in respect of import of goods or services or both where the registered person is not eligible for input tax credit;

(f) in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,

the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.

(2) The balance amount of integrated tax remaining in the integrated tax account in

respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the, —

(a) State where such supply takes place; and

(b) Central Government where such supply takes place in a Union territory:

Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to, —

(a) each of the States; and

(b) Central Government in relation to Union territories,

in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

[21][(2A) The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council be apportioned at the rate of fifty percent to the Central Government and fifty percent to the State Governments or the Union territories as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections]

(3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, mutatis mutandis, apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.

(4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.

(5) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be

[21] Inserted vide The Central Goods and Services (Amendment) Act, 2018 w.e.f. 01.02.2019.

apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

[22][17A. Transfer of Certain Amounts

Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed.]

17.1 Introduction

GST is a destination-based consumption tax – this principle is evident in the place of supply provisions. Therefore, GST is to be paid to the State where the destination or consumption takes place. And registration of each taxpayer in every destination-State is impossible to comply or administer. It is for this reason that IGST is applicable on supplies whose destination is outside the home-State. Therefore, IGST is not actually a tax but an equitable tax revenue transfer mechanism from the State of origin of supply to the State of its destination where revenue rightly belongs. With IGST having been collected as if it were a tax, it now needs to be transferred to the destination-State. This is provided by section 17 and discussed below.

17.2 Analysis

<table>
<tr><th>Inter-State Supply (to)</th><th>IGST Paid (on)</th><th>Quantum of IGST</th><th>Transfer (to)</th></tr>
<tr><td>Unregistered recipient</td><td rowspan="4">IGST paid on inter-State supplies
IGST paid on import of goods or services</td><td rowspan="2">Equivalent Central tax applicable on said supplies in intra-State supply</td><td rowspan="2">Union</td></tr>
<tr><td>Composition taxable person</td></tr>
<tr><td>Registered taxable person not eligible to input tax credit</td><td rowspan="2">Balance amount of IGST</td><td>State, its respective share of inward supplies@</td></tr>
<tr><td>Registered taxable person eligible to input tax credit but does not avail it within period specified</td><td>Union, share of inward supplies to UTs@</td></tr>
</table>

@ If this amount cannot be reliably allocated, then rule-of-proportion – total supplies of that State/UT compared to total inter-State supplies during the financial year.

[22] *Inserted vide the Finance (No. 2) Act, 2019 -Brought into force w.e.f. 01.01.2020.*

Please note the following further aspects:

- Above formula applies to interest, penalty and compounding amount collected in respect of inter-State supplies
- Any apportioned IGST is found to be refundable, then the same will be recouped from the subsequent transfers
- Time and manner of transfer to States/UTs will be prescribed
- Now the government is providing an option for transfer of balance from electronic cash ledger under one head to the other, it also requires the physical transfer of funds between the governments also. Where CGST is transferred to SGST by any person in the electronic cash ledger, the State Government should compensate the Central Government for the deficit transferred.

Statutory provisions

18. Transfer of input tax credit

(1) On utilization of credit of integrated tax availed under this Act for payment of, —

(a) central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;

(b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;

(c) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

Explanation —For the purposes of this Chapter, "appropriate State" in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

18.1 Introduction

After apportionment of IGST paid, it leaves credit of IGST availed to be accounted for on its utilization. This section addresses the apportionment on utilization of IGST credit.

18.2 Analysis

IGST	Appropriation	Allocation (to)
Credit of IGST paid availed	Utilized to pay CGST	Union – Central tax account
	Utilized to pay SGST	State – State tax account@
	Utilized to pay UTGST	Union – UT tax account@

@ of respective State or UT

Statutory provisions

19. Tax wrongfully collected and paid to Central Government or State Government

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

19.1 Introduction

Payment of tax based on erroneous determination of 'nature of supply' is not permitted to be adjusted because of the above appropriation of payments. The remedy lies in refund.

19.2 Analysis

Taxable person who has paid tax in error is entitled to refund by first restoring the discharge of the correct tax due so that the incorrect tax paid reflects on the Common Portal as 'paid in excess' and:

- IGST paid in error will be refunded subject to conditions prescribed.
- IGST payable due to payment of CGST/SGST/UTGST is exempted from payment of interest on IGST due.

The provisions of section 54 of the CGST Act have not been extended to this refund although the conditions to be prescribed would not be too far from the requirements in section 54.

Chapter 9
Miscellaneous

20. Application of provisions of Central Goods and Services Tax Act

21. Import of services made on or after the appointed day

22. Power to make rules

23. Power to make regulations

24. Laying of rules, regulations and notifications

25. Removal of difficulties

Statutory Provisions

20. Application of provisions of Central Goods and Services Tax Act

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

> *(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,*

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

[23][Provided also that where the appeal is to be filed before Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.]

20.1. Introduction

Certain provisions of CGST Act in relation to levy of tax would be applicable to IGST Act also.

20.2. Analysis

The following provisions of CGST Act shall apply to IGST Act:

- scope of supply;
- composite supply and mixed supply;
- time and value of supply;
- input tax credit;
- registration;
- tax invoice, credit and debit notes;
- accounts and records;
- returns, other than late fee;
- payment of tax;
- tax deduction at source;
- collection of tax at source;
- assessment;
- refunds;
- audit;
- inspection, search, seizure and arrest;
- demands and recovery;
- liability to pay in certain cases;
- advance ruling;

[23] *Inserted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.*

— appeals and revision;

— presumption as to documents;

— offences and penalties;

— job work;

— electronic commerce;

— transitional provisions; and

— miscellaneous provisions including the provisions relating to the imposition of interest and penalty.

The following exceptions are provided:

(a) In case of TDS (tax deducted at source) the deductor shall deduct tax at the maximum rate of two per cent from the payment made or credited to the supplier.

(b) In case of TCS (tax collected at source), the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies.

(c) The value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.

(d) In cases where the penalty is leviable under the CGST Act and the SGST Act or the UTGST Act, the penalty leviable under this Act shall be the sum total of the said penalties.

(e) The maximum amount of pre-deposit in case of filing of appeal has been prescribed as:

i. ₹ 25 crores in case of Appellate Authority

ii. ₹ 50 crores in case of Appellate Tribunal

20.3 FAQs

Q1. What are the provisions under CGST which would be applicable to IGST also?

Ans. The provisions relating to scope of supply, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, other than late fee, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, transitional provisions and miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall apply, in relation to the Integrated Tax as they apply in relation to tax under the CGST Act, 2017.

Q2. What is the percentage of tax to be deducted or collected in case of tax deducted at source and tax collected at source?

Ans. The percentage of tax to be deducted by the deductor from the payment made or credit to the supplier is 2% in case of tax deduction at source.

In case of tax collection at source, the operator should collect 2% tax on the net value of taxable supplies.

Statutory provisions

21. Import of services made on or after the appointed day

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation.—For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

21.1. Introduction

This provision deals with taxability of import of services made on or after the appointed day.

21.2. Analysis

(a) It provides that import of services made on or after the appointed day shall be liable to tax under the provisions of IGST Act even if the transactions for such import of services had been initiated before the appointed day.

(b) However, if the tax on such import of services had been paid in full under the pre-GST regime, no tax shall be payable on such import under the IGST Act.

(c) That apart if the tax on such import of services had been paid in part under the erstwhile law, the balance amount of tax shall be payable on such import under this Act.

(d) As per the explanation appended to the section a transaction shall be deemed to have been initiated before the appointed day if either the invoice or payment, either in full or in part, has been received or made before the appointed day.

21.3. FAQs

Q1. Whether import of services made after appointed day is liable to tax under this Act?

Ans. Yes. Any import of services made after appointed day is liable to tax under this Act. However, the taxability is subject to the provisos in section 21 of IGST Act.

Q2. What would be the status of import of services, where the tax on the said transaction is paid in full under earlier laws?

Ans. Not liable to tax under this Act. As per the first proviso of section 21 of IGST Act, where the tax on import of services is paid in full under earlier laws, no tax under this Act would be made applicable though such import takes place after the appointed day.

Q3. What would be the status of import of services where the tax on the said transaction is paid in part under earlier laws?

Ans. As per the second proviso to section 21 of IGST Act, where the tax is paid in part for import of services under the earlier laws, only the balance amount of tax would be payable under this Act.

Q4. When would the transaction be deemed to have been initiated before the appointed day?

Ans. Under any of the following circumstances it would be deemed that the transaction is initiated before the appointed day-

(i) Where invoice relating to such supply; or

(ii) Payment, either in full or in part;

has been received or made before the appointed day.

21.4 MCQs

Q1. Where the tax is fully paid under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Tax as per this Act, to be paid again

Ans. (a) No tax payable under this Act

Q2. Where the tax is paid in part under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Balance amount of tax payable on such import of services

Ans. (b) Balance amount of tax payable on such import of services

Statutory provisions

22. Power to make rules

(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

22.1. Introduction

It provides power to the Central Government to make Rules for the purposes of IGST Act upon recommendations by the GST Council.

22.2 Analysis

Power to make rules by the Central Government is discussed hereunder:

- The Central Government may make rules for carrying out the purposes of this Act, by notification on the recommendations of the Council.
- The Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- The power to make rules shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the appointed day.
- Any rules made may provide for penalty upto Rs.10,000 for contravention thereof.
- "Council" would mean the Goods and Services Tax Council established under Article 279A of the Constitution.

22.3 FAQ

Q1. Who is given the power to make rules under IGST Act?

Ans. The Central Government may, by notification, make rules for carrying out the purposes of this Act on the recommendation of the Council.

22.4 MCQ

Q1. Under section 22, the Central Government has power to make rules on recommendation of whom of the following?

(a) Ministry of Finance

(b) GST Council

(c) CBEC

(d) None of the above

Ans. (b) GST Council

Statutory provisions

23. Power to make regulations

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

23.1. Introduction

This provision refers to the Board's power to make regulations.

23.2. Analysis

To carry out the provisions of the IGST Act, the Board is empowered to make regulations, which would be notified. Such regulations should not be inconsistent with the provisions of the IGST Act and the Rules made thereunder.

Statutory provisions

24. Laying of rules, regulations and notifications

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

24.1. Introduction

This section lays down the general procedure of laying delegated legislations before the Parliament for a prescribed duration.

24.2. Analysis

(a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.

(b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.

(c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions

(d) Before the expiry of the session or successive sessions, both Houses may make suitable modifications and would have effect in such modified form.

(e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

Statutory provisions

25. Removal of Difficulties

(1) If any difficulty arises in giving effect to any provision of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of [24][five] years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

25.1. Introduction

The responsibility to implement the legislatures' will is of the appropriate Government. In doing this, the Act empowers the appropriate Government with the necessary power to remove any difficulty that may arise.

25.2. Analysis

(i) If the Government identifies that there is a difficulty in implementation of any provision of the GST Legislation, it has powers to issue a general or special order, to carry out anything to remove such difficulty.

(ii) Such activity of the Government must be consistent with the provisions of the Act and should be necessary or expedient.

(iii) Maximum time limit for passing such order shall be 5 years from the date of effect of the IGST Act.

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[24] *Substituted vide the Finance Act, 2020 effective through Notf No. 04/2020-IT dt. 24.06.2020. Applicable w.e.f. 30.06.2020.*

25.3. Related provisions of the Statute:

This is an independent section and would be applicable for implementation of the GST law.

25.4. FAQs

Q1. Will the powers include the power to notify the effective date for implementation of particular provisions?

Ans. Yes, all powers regarding implementation of any provision of the GST law is covered.

Q2. Will the powers include bringing changes in any provision of law?

Ans. No, the Government has power only to decide on the practical implementation of law. But it cannot amend the Legislation through this section.

Q3. What is the maximum time limit for exercising the powers under section 25?

Ans. The maximum time limit is 5 years from the date of effect of IGST Act.

Q4. Whether the reasons be mentioned in the order?

Ans. The order is issued only when there is a necessity or expediency for it. Specific reasons may not be mentioned in the order.

25.5. MCQs

Q1. Whether prior approval of the Parliament is necessary?

(a) Yes

(b) No

Ans. (b) No

Q2. What is the maximum period for exercising this power?

(a) 4 years

(b) 5 years

(c) 2 years

(d) 1 year

Ans. (b) 5 years

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

Statement of Objects and Reasons

The Union Territories (for brevity, "UT") were earlier empowered to levy Sales Tax / VAT on the sale of goods, whereas the Central Government was empowered to levy excise duty and service tax on manufacture of goods and supply of services, respectively. This led to a multiplicity of indirect taxes being levied by various authorities.

The difficulties faced in the erstwhile indirect tax system were:

(i) Rising hidden costs in trade and industry due to multiplicity of taxes at the Central and Union Territory levels

(ii) Lack of uniformity of tax rates and tax structure, compliance procedures across Union Territories

(iii) Cascading of taxes

(iv) Non-availability of cross-utilization of credits i.e., utilization of excise duty and service tax credits against taxes levied by Union Territories and vice-versa.

(v) Credit of taxes levied by one Union Territory or State cannot be set off against taxes levied by other Union Territories or States.

Under the GST regime, Union Territory tax along with related GST legislations replaced the erstwhile taxes while empowering the Central Government to levy Union Territory tax on the supply of goods or services or both taking place within a Union Territory not having a Legislature. The UTGST legislation:

(i) Provides for levy of tax on all intra-State supplies of goods or services or both, except alcoholic liquor for human consumption, at the rates recommended by the GST Council;

(ii) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;

(iii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Governments and Union Territories;

(iv) Provide for assistance by officers of Police, Railways, Customs, and those engaged in the collection of land revenue, including village officers, and officers of central tax and officers of the State tax to proper officers in the implementation of the proposed Legislation;

(v) Empowers recovery of tax, interest or penalty payable by a person and remaining unpaid;

(vi) Empowers establishing of an Authority for Advance Ruling to enable the taxpayers to seek binding clarity on taxation matters;

(vii) Provides for elaborate transitional provisions for smooth transition of taxpayers to GST regime; and

(viii) Allows application of certain provisions of the CGST Act, 2017 to the extent relevant for the purposes of this Act;

(ix) Empower the Commissioner to issue orders, instructions or directions to the UT tax officers.

Chapter 1
Preliminary

1.	**Short title, extent and commencement**
2.	**Definitions**

Statutory provision

1.	***Short title, extent and commencement***
(1)	*This Act may be called the Union Territory Goods and Services Tax Act, 2017.*
(2)	*It extends to the Union territories of Andaman and Nicobar Islands, Lakshadweep, [1][Dadra and Nagar Haveli and Daman and Diu, Ladakh], Chandigarh and other territory.*
(3)	*It shall come into force on such date as the Central may, by notification in the Official Gazette, appoint:* *Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.*

Title:

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a fair description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as an ease of reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

Extent:

Part I of the Constitution of India states: "*India, that is Bharat, shall be a Union of States*". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-eight (28) States and eight (3 with Legislature + 5 without Legislature = 8) Union Territories.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi,

[1] *Substituted vide The Finance Act, 2020.*

Puducherry and Jammy & Kashmir have been provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (28); (ii) Union Territories with Legislature (3); and (iii) Union Territories without Legislature (5).

'State' under the GST law is defined to include a Union Territory with Legislature. Delhi, Puducherry and Jammu & Kashmir though are Union Territories, have a Legislature of their own. Accordingly, for the purpose of GST Laws, the Union Territories of Delhi, Puducherry and Jammu & Kashmir will be regarded as a State and will be governed by the respective SGST laws passed by them, instead of the UTGST law which is passed by the Central Government.

JAMMU AND KASHMIR, LADAKH GST:

The Jammu and Kashmir Reorganization Act was passed by the Parliament. With effect from 31.10.2019, Jammu and Kashmir and Ladakh have been granted separate Union Territory Status. As far as GST is concerned, The Jammu and Kashmir Goods & Service Act is applicable to Jammu & Kashmir and UTGST Act is applicable to Ladakh.

Commencement:

The UTGST Act came into operation on the date appointed by the Central Government by means of a notification in the Official Gazette (i.e., 1st July 2017). A provision has been made to notify different dates for commencement of different provisions of the Act.

Statutory provisions

2. Definitions

In this Act, unless the context otherwise requires–

(1) ''appointed day'' means the date on which the provisions of this Act shall come into force.

The provisions of the UTGST Act are implemented with effect from 1st July 2017 with powers vested to notify different dates for effective date of commencement of different provisions of the Act.

(2) ''Commissioner'' means the Commissioner of Union territory tax appointed under section 3;

Every Union Territory is administered by the President through an Administrator appointed by him. The Administrator, in turn, is empowered to appoint Commissioners and other officers for carrying out the purposes of the Act who will be deemed to be 'Proper Officers' for administering the Act.

The officers appointed under the erstwhile central and UT laws will continue to function as officers under the UTGST Act as well.

(3) ''designated authority'' means such authority as may be notified by the Commissioner;

Currently, the term does not find a reference in the Act and will be notified by the Commissioner from time to time.

(4) ''exempt supply'' means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

The meaning of exempt supply is similar to the meaning assigned to it under the CGST law with the exception that supplies that are **partly exempted** from tax under this Act will also be considered as 'exempt supply'. On the contrary, partially exempted supplies under the CGST law would not be considered as 'exempt supplies' under the CGST law. The word "wholly" found in section 2(47) of the CGST Act which is missing from section 2(4) under the UTGST Act in the definition of exempt supply.

Exempt supplies comprise the following 3 types of supplies:

(a) supplies taxable at a 'NIL' rate of tax;

(b) supplies that are wholly or partially exempted from UTGST or IGST, by way of a notification; and

(c) supplies that are not taxable under the Act (petrol, high speed diesel, alcoholic liquor for human consumption etc.)

The following aspects need to be noted:

(a) Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;

(b) Input tax credit attributable to exempt supplies will not be available for utilisation/ set-off.

(5) ''existing law'' means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;

This covers all the erstwhile Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law, Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as The Indian Stamp Act, 1899, would not be covered here.

(6) ''Government'' means the Administrator or any authority or officer authorized to act as Administrator by the Central Government;

Every Union Territory is administered by the President through an 'Administrator' appointed by him. Even a Governor of a State can be appointed as the Administrator of an adjoining UT. Such an Administrator will be regarded as 'Government' for the purposes of the UTGST law.

(7) ''output tax'' in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

The output tax chargeable on taxable supply of goods or services can be summarised as under:

Type of Supply	Output tax	Reference
Supplies within a UT without Legislature	UTGST + CGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act
Supplies between two UT without Legislature	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act
Supplies between a UT without Legislature and a State (including UT with Legislature)	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act

The following aspects need to be noted:

(a) While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the Statute from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.

(b) The amount covered under this term is the tax 'chargeable' under law, and not what is 'charged'. Therefore, some experts believe that in case a person wrongly charges an amount as tax or charges an excess rate of tax as compared to the applicable tax rate, such excess would not qualify as output tax.

(c) Some experts are of the view that taxes payable on reverse charge basis would also be out of the scope of 'output tax'. Since credit of input tax can only be used to pay output tax, the above will have to be discharged by way of cash only (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).

(d) The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the UT tax payable on such supplies as output tax in the hands of the supplier.

(8) "Union territory" means the territory of, —

(i) the Andaman and Nicobar Islands;

(ii) Lakshadweep;

[(iii) Dadra and Nagar Haveli and Daman and Diu;

(iv) Ladakh][2];

(v) Chandigarh; or

(vi) other territory.

[2] *Substituted vide The Finance Act, 2020 dt. 27.03.2020. Earlier it read as "Dadra and Nagar Haveli and Daman and Diu".*

Explanation. —For the purposes of this Act, each of the territories specified in sub-clauses (i) to (vi) shall be considered to be a separate Union territory;

Analysis

'State' under the GST law is defined under the CGST Act to include a Union Territory with Legislature. Delhi, Puducherry and Jammu & Kashmir, being UTs with Legislature, will be regarded as 'States' for GST, and will be governed by their respective SGST laws, instead of the UTGST law.

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the UTs of Delhi, Puducherry and Jammu & Kashmir), and excludes the five UTs without Legislature listed under clauses (i) to (v) of the definition.

All territories that fall into the ambit of 'other territory' would also form part of the meaning of the term 'Union territory'. The purpose of this inclusion is to ensure that any Indian territory that remains unclaimed by all the States and Union Territories can be brought into the scope of GST. Although there is no specific indication that the extent of the term should be limited to the territory of India, locations outside India cannot be said to fall into the scope of 'other territory' defined above, as it would defeat the purpose of law.

(9) ''Union territory tax'' means the tax levied under this Act;

It refers to the tax charged under this Act on intra-State supply of goods or services or both, in addition to the tax levied under the CGST law. The rate of UT tax is capped at 20% and will be notified by the Central Government based on the recommendation of the GST Council.

(10) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax (Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.

Certain words and expressions like person, supplier, recipient, intra-state supply, reverse charge, cess, place of supply etc. defined in the CGST/ SGST/ IGST laws will have the same meaning for UTGST law.

Chapter 2
Administration

3.	**Officers under this Act**
4.	**Authorisation of officers**
5.	**Powers of officers**
6.	**Authorisation of officers of Central Tax as proper officer in certain circumstances**

Statutory provision

3. Officers under this Act

The Administrator may, by notification, appoint Commissioners and such other class of officers as may be required for carrying out the purposes of this Act and such officers shall be deemed to be proper officers for such purposes as may be specified therein:

Provided that the officers appointed under the existing law shall be deemed to be the officers appointed under the provisions of this Act.

4. Authorisation of officers

The Administrator may, by order, authorise any officer to appoint officers of Union territory tax below the rank of Assistant Commissioner of Union territory tax for the administration of this Act.

5. Powers of officers

(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.

6. Authorisation of officers of Central Tax as proper officer in certain circumstances

(1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1), —

(a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

Introduction

Union Territory without a legislature enjoys laws passed by Parliament. The UTGST Act is one where the law is by the Parliament but its administration is left with the Administrator of the Union Territory.

Analysis

Without being bound by the rigours and specificity of executive officers under the CGST Act, the UTGST Act empowers the Administrator to issue a notification appointing one or more Commissioners and such other class of officers as required.

The Administrator is also empowered to authorise an officer to appoint officers of UT tax lower in rank than the Assistant Commissioner as required. Commissioners appointed by the Administrator are empowered to impose conditions and limitations necessary in the discharge of functions by the officers of UT Tax. A superior officer is permitted to discharge the functions and exercise the authority conferred on a subordinate officer. Interestingly, we do not find such flexibility in the CGST Act and the IGST Act. Not only does this Act prescribed the Assuming of power by a superior officer but also permits delegation of vested powers to be exercised by any other officer of UT Tax. Appellate Authorities under this Act are denied the flexibility of such appropriation or delegation of power vested in them.

Continuing with efficiency in tax administration, without causing any prejudice to the UT Tax Act, officers under the CGST Act are authorised to be officers under this Act. This is permitted only upon the recommendation of the Council and subject to any conditions that may be imposed by the Administrator.

Where officers under this Act initiate any proceedings, said officers shall proceed to pass orders not only in respect of UT Tax but also in respect of Central Tax. Where such conjoined proceedings are underway, the said officers are expected to intimate officers of Central Tax. Similarly, where proceedings initiated by officers in respect of Central tax, the underlying transaction or the taxable base being the same, such officers under the CGST Act, are required to pass orders addressing demands in respect of UT Tax arising from the common underlying transactions. Whichever officer initiates any proceedings will determine the law and forum for exercising lawful jurisdiction in respect of rectification, appeal and revision.

Chapter 3
Levy and Collection of Tax

7.	**Levy and Collection**
8.	**Power to grant exemption from tax**

Statutory provisions

7. Levy and collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding twenty per cent., as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.

(3) The Central Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) [3][The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both].

(5) The Central Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the

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[3] Substituted vide The Union Territory Goods and Services Tax (Amendment) Act, 2018 read with Notification No. 1/2019 - Union Territory Tax, dt. 29.01.2019 - w.e.f. 01.02.2019

provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for paying tax and such person shall be liable to pay tax.

7.1. Introduction

a) The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no one can be taxed by implication, a person can be subject to tax in terms of the charging section only.

b) Section 7 is the charging provision of the UTGST Act. It provides that all intra-State supplies would be liable to UTGST subject to a ceiling rate of 20%. The levy is on all goods or services or both except on the supply of alcoholic liquor for human consumption. Besides, GST may be levied on the supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel with effect from such date as may be notified by the Central Government after recommendation of the Council. It also provides for the value on which tax shall be paid, the maximum rate of tax applicable on such supplies, the manner of collection of tax by the Government and the person who will be liable to pay such tax. The provision of this section is comparable to the provisions of section 9 of the CGST Act.

c) Under the UTGST law, the levy of tax is as follows:

   (a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism*)*;

   (b) In the hands of the recipient - on receipt of goods and / or services (referred to as tax under reverse charge mechanism*)*

   (c) In the hands of electronic commerce operator - on services supplied by the suppliers throug

   (d) h such electronic commerce operator

d) Normally, the supplier of goods or services or both are liable to discharge tax on the supplies effected. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and/or services.

   As per section 7(3) of the UTGST Act, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods or services or both will be liable to discharge the tax.

Accordingly, all other provisions of this Act and the CGST Act, as applicable, will apply to the recipient of such goods or services or both, as if the recipient is the supplier of such goods or services or both – viz., for the limited purpose of such transactions, the recipient would be deemed to be the 'supplier'.

Further, section 7(4) of the UTGST Act provides that when specified category of goods &/ services are supplied by a supplier, who is un-registered person to a receiver, who falls under specified class of registered person, the liability to pay tax on such supplies will be on recipient under reverse charge basis. Thus, specified class of registered person would be required to pay GST on all supplies received by it from un-registered persons. Reverse charge mechanism is not applicable on recipient of goods/services, who are registered but do not fall under specified class of registered person, receiving such goods/services from un-registered person.

e) Additionally, where any supply of services is effected through e-commerce operators, the law provides that the Central Government may on recommendations of the Council notify specify categories of services the tax on intra-State supplies of which shall be paid by the e-commerce operator and where the e-commerce operator:

   (a) does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.

   (b) does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.

   And all the provisions of the UTGST Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

f) In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:

   (a) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.

   (b) Fulfilment centre – here States have been contesting that this model is one involving 'buy-sell' and accordingly liable to GST. The test here is to establish the fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.

   (c) Hybrid (of above 2) – all though not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly establish which side of the fence they would prefer to fall on so that the respective incidence of tax follows.

(d) Agency – this is employed by few businesses involving supply of industrial inputs. The *modus operandi* is that the principal logs in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce operator to constitute an agency. Such arrangements need to be vetted to ensure the inference of agency that emerges if it is not so desired, then the same may be redrafted suitably. Schedule I of the CGST Act states that transactions between principal and agent are deemed to be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

7.2 Analysis

The discussion of Levy under section 9 of the CGST Act made in this book may be referred for detailed analysis.

Levy of tax: Every intra-State supply will be liable to tax, if:

(a) Supply should involve goods or services or both viz., wholly goods or wholly services or both viz.,

Even where a supply involves both, goods and services, the law provides that such supplies would be classifiable either as, wholly goods or wholly services. The reference to be made to Schedule II of the CGST Act which provides for this classification.

(b) The supply is an intra-State supply – viz., ordinarily, the location of the supplier and the place of supply is in same Union Territory. (Refer Section 8 of the IGST Act to understand the meaning of intra-State supply);

(c) The tax shall be payable by a 'taxable person' as explained in the definition section 2(107) and explained in sections 22 & 24 of CGST Act.

Tax shall be payable by a 'taxable person': The tax shall be payable by a 'taxable person' i.e., person/ separate establishments of persons registered or liable to be registered under sections 22 and 24 of the CGST Act.

Rate and value of tax: The rate of tax will be as specified in the notification that would be issued in this regard, subject to a maximum of 20%. The rates would be determined based on the recommendation of the Council and the rate of tax so notified will apply on the value of supplies as determined under section 15 of the CGST Act.

Supply:

Refer discussion under Chapter III of the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the provisions relating to 'composite supply' and 'mixed supply' and 'reverse charge' will equally apply for supplies taxable under the UTGST Act.

transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a supply. Further,

free supplies were liable to excise duty, while under the GST laws, free supplies require reversal of input tax credit;

7.3 Related provisions

Statute	Section	Description
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'
CGST	Section 2(17)	Definition of 'business'
CGST	Section 2(107)	Meaning of 'taxable person'
CGST	Section 2(31)	Meaning of 'consideration'
IGST	Section 8	Meaning of intra-State supplies
UTGST	Section 7	Levy and collection of UTGST

7.4 FAQs

Q1. Is the reverse charge mechanism applicable only to services?

Ans. No. Reverse charge applies to supplies of goods as well as services.

Q2. What will be the implications in case of purchase of specified categories of goods (specified by Government) from unregistered person?

Ans. The receiver of goods would be liable to pay tax under reverse charge.

7.5 MCQs

Q1. As per section 7, which of the following would attract levy of UTGST?

(a) Inter-State supplies

(b) Intra-State supplies

(c) Any of the above

(d) None of the above

Ans. (b) Intra-State supplies

Q2. Who can notify a supply to be taxed under reverse charge basis?

(a) Board

(b) Central Government, on the recommendations of the Council

(c) GST Council

(d) None of the above

Ans. (b) Central Government, on the recommendations of the Council

Statutory provisions

8. Power to grant exemption from tax

(1) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(4) Any notification issued by the Central Government under sub-section (1) of section 11 or order issued under sub-section (2) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or an order issued under this Act.

Explanation - For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, more than the effective rate, on such supply of goods or services or both.

8.1 Introduction

This section states that the Central Government may grant exemptions for intra-State supply of goods and / or services within a Union Territory. Reference may also be made to section 11 of the CGST Act and section 6 of the IGST Act for a detailed analysis.

8.2 Analysis

The Central Government will be empowered to grant exemptions from payment of UTGST on intra-State supplies within Union Territory, subject to the following conditions:

(i) Exemption should be in public interest

(ii) By way of issue of notification

(iii) On the recommendation from the Council

(iv) Absolute / conditional exemption may be for any goods and / or services

(v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

- With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and / or services, and not specifically for class of persons.
- It is to be noted that in cases where goods and/or services are exempt absolutely, no input tax credit can be claimed.
- Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, even inadvertence in not availing such absolute exemptions are made inexcusable. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.
- There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.
- There is a view that in case of conditional exemptions, it could operate as an optional exemption such that the taxable person may pay higher rate of tax (so that there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that exemptions would not be optional and would be mandatory and the associated conditions are also mandatorily to be satisfied.
- In terms of sub-section (2) of section 8 of the UTGST Act, the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, trade and industry are apprehensive that this could be used without necessary superintendence.
- To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an "Explanation" at any time within a period of 1 year from the date of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.
- The law makes it clear that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes more than the effective rate.

Exemption under section 11 of the CGST/SGST Act equally applicable

Any exemption notification or special order issued under Section 11 of the CGST Law will apply equally for intra-UT supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the UTGST Law.

Effective date of the notification or special order

The effective date of the notification or the special order would be the date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the Department of the Central Government.

8.3 Related provisions

Statute	Section	Description
CGST	Section 11	Power to grant exemption from tax (Exemption from payment of CGST)
IGST	Section 6	Power to grant exemption from tax (Exemption from payment of IGST)
UTGST	Section 8	Power to grant exemption from tax

Chapters of UTGST Act covered under CGST Act / IGST Act

Sl. No.	Chapter No. / Heading – UTGST	Sections No. – UTGST	Description
1	IV – Payment of tax	9	Payment of tax
		10	Transfer of input tax credit
2	V – Inspection, Search, Seizure and Arrest	11	Officers required to assist proper officers
3	VI – Demands and Recovery	12	Tax wrongfully collected and paid to the Central Government or UT Government
		13	Recovery of tax
4	VII – Advance Ruling	14	Definitions
		15	Constitution of Authority for Advance Ruling
		16	Constitution of Appellate Authority for Advance Ruling

5	VIII – Transitional Provisions	17	Migration of existing tax payers
		18	Transitional arrangements for input tax credit
		19	Transitional provisions relating to job work
		20	Miscellaneous transition provisions
6	IX- Miscellaneous	21	Application of provisions of CGST Act
		22	Power to make rules
		23	General power to make regulations
		24	Laying of rules, regulations and notifications
		25	Power to issue instructions or directions
		26	Removal of difficulties

- The sections cited *supra* other than the provisions relating to Chapter IX - Miscellaneous are discussed in the relevant sections of CGST / IGST laws wherever deemed fit.
- Provisions of Chapter IX - Miscellaneous other than section 21 of the UTGST Act are similar to the provisions as discussed in the context of IGST Act. There is an additional provision (section 25 under the UTGST Act), which deals with Commissioner's power to issue instructions or directions, which is similar to section 168 of the CGST Act. Readers are requested to refer to the said provisions in this context.
- Section 20 of the UTGST Act *inter-alia* provides that subject to the provisions of the UTGST Act and the rules made thereunder, the provisions of the CGST Act, relating to following shall, *mutatis mutandis* apply.

The discussions on the following provisions have been provided in the CGST Act in the relevant chapters/sections:

(*i*)	scope of supply;
(*ii*)	composition levy;
(*iii*)	composite supply and mixed supply;
(*iv*)	time and value of supply;
(*v*)	input tax credit;

(*vi*)	registration;
(*vii*)	tax invoice, credit and debit notes;
(*viii*)	accounts and records;
(*ix*)	returns;
(*x*)	payment of tax;
(*xi*)	tax deduction at source;
(*xii*)	collection of tax at source;
(*xiii*)	assessment;
(*xiv*)	refunds;
(*xv*)	audit;
(*xvi*)	inspection, search, seizure and arrest;
(*xvii*)	demands and recovery;
(*xviii*)	liability to pay in certain cases;
(*xix*)	advance ruling;
(*xx*)	appeals and revision;
(*xxi*)	presumption as to documents;
(*xxii*)	offences and penalties;
(*xxiii*)	job work;
(*xxiv*)	electronic commerce;
(*xxv*)	settlement of funds;
(*xxvi*)	transitional provisions; and
(*xxvii*)	miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

It is important to note that the UTGST Act is legislated by the Central Government and the corresponding rules would also be legislated under its authority.

Note:

The following rules are common to all UTGST Acts i.e., Lakshadweep, Andaman & Nicobar, Dadra & Nagar Haveli and Daman & Diu, Chandigarh and Ladakh.

Rule 1: Short title and Commencement.

(1) These rules may be called the Union Territory Goods and Services Tax (Andaman and Nicobar Islands) Rules, 2017.

(2) They shall come into force with effect from the 1st day of July, 2017.

Rule 2: Adaptation of Central Goods and Services Tax Rules, 2017.

(1) The Central Goods and Services Tax Rules, 2017, in respect of scope of supply, composition levy, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, settlement of funds, transitional provisions, and miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, mutatis mutandis, apply except the following rules:-

Rules	Particulars
Rule 90 (4) of CGST Rules 2017	Acknowledgement
Second proviso to Rule 117 (1) of CGST Rules 2017	Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed.
Rule 119 of CGST Rules 2017	Declaration of stock held by a principal and job-worker

(a) **Analysis of the Amendment to the Rules: For Amendment of Rule 90(4) of the CGST Rules 2017 for the purpose application of UTGST Rules**

Rule 90 (4) of the CGST Rules 2017 earlier read as under:

"(4) Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Services Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3)".

The amended rule shall read as under:

"(4) Where deficiencies have been communicated in FORM GST RFD-03 under the Central Goods and Services Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).";

The aforesaid rules have been amended to the extent of for the words *State Goods and Services Tax Rules, 2017* shall be read as *Central Goods and Services Tax Rules, 2017* in line with the CGST Rules.

(b) **Amendment to Rule 117 of the CGST Rules 2017 for the purpose of application of UTGST Rules**

(i) The second proviso to rule 117(1) of the UTGST Rules, 2017 *inter-alia* provides obligation to file a details of Transitional claim in respect of Forms received and pending with regards to declarations in Form C or Form F and certificates in

Form E, Form H or Form I as specified in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

(ii) Further, in terms of rule 117(4) of the CGST Rules 2017, a registered person who was not registered under the existing law shall be eligible to avail credit. However, this provision has not been made applicable under the UTGST Rules.

(c) **For Amendment to the Rule 119 of CGST Rules 2017 for the purpose of application of UTGST Rules**

Rule 119 of UTGST Rules 2017 provides that the declaration of stock held by principal and agent shall be within 90 days of the appointed day (w.e.f. 01.07.2017) submitted electronically in Form GST TRAN-1. Section 142(14) is not traceable to the CGST Act, 2017, as a corollary one may have to fall back on the SGST Legislation.

Other rules of UTGST shall be same as of the CGST Rules, 2017

Explanation:- For the purposes of these rules, it is hereby clarified that all references to section 140 of the CGST Act, 2017, shall be construed to refer to section 18 of the UTGST Act, 2017.

GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017

The Goods and Services Tax (Compensation to States) Act, 2017 ("**the GST Compensation Act**") provides a mechanism to compensate the States on account of loss of revenue which may arise due to implementation of the Goods and Services Tax read together with the Constitutional (One Hundred and First Amendment) Act, 2016, for a period of 5 years.

This Act, *inter-alia* provides:

(a) That the base year during the transition period shall be reckoned as the financial year 2015-16 for the purpose of calculating compensation amount payable to the States;

(b) That the revenue proposed to be compensated would consist of revenues from all taxes that stands subsumed into the GST law, as audited by the Comptroller and Auditor General of India;

(c) For reckoning the growth rate of revenue subsumed for a State at 14% per annum;

(d) That the compensation will be released bi-monthly based on the provisional numbers furnished by the Central Accounting Authorities and the final adjustment to be done after the accounts are subjected to audit by CAG;

(e) That the revenue foregone on account of grant of exemption in the special categories State (Article 279A), be counted for the purpose of determining revenue for the base year 2015-16;

(f) That the revenue of States directly devolved to Mandi / Municipalities would be considered as revenue subsumed;

(g) Levy of a cess over and above the GST on certain notified goods to compensate States for 5 years on account of revenue loss suffered by them;

(h) That the proceeds of the cess will be utilised to compensate States that warrant payment of compensation;

(i) That 50% of the amount remaining unutilised in the fund at the end of the fifth year will be transferred to the Centre and the balance 50% would be distributed amongst the State and Union Territories in the ratio of total revenues from SGST / UTGST of the fifth year;

(j) That 50% of the amount remaining unutilised in the fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance 50% shall be distributed amongst the States in the ratio of their base year revenue.

Relevant provisions of the GST Compensation Act warranting attention are reproduced below:

2. Definitions:

(c) "cess" means the goods and services tax compensation cess levied under section 8;

(g) "input tax" in relation to a taxable person, means:

(i) the cess charged on any supply of goods or services or both to him;

(ii) the cess charged on import of goods, and includes the cess payable on reverse charge basis;

(p) "taxable supply'' means a supply of goods or services or both which is chargeable to the cess under this Act;

8. Levy and Collection of Cess

(1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council :*

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act.

**This 5 years period has been further extended by Notification 1/2022-Compensation for a further period up to 31st March 2026 by introduction of Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022.*

(2) The cess shall be levied on such supplies of goods and services as are specified in column 2 of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set-forth in the corresponding entry in column 4 of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify.

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under Section 15 of the Central Goods and Services Tax Act for intra-State and inter-State supplies of goods or services or both.

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975(51 of 1975), at

the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 (52 of 1962), on a value determined under the Customs Tariff Act, 1975.

9. Returns, Payments and Refunds

(1) Every taxable person registered making a taxable supply of goods or services or both, shall –

(a) Pay the amount of cess as payable under this Act in such manner;

(b) Furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and

(c) Apply for refunds of such cess paid in such form, as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act and the rules made thereafter, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of Central Tax on such supplies under the said Act or the rules made thereunder.

10. Crediting proceeds of Cess to Fund

(1) The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.

(2) All amounts payable to the States under section 7 shall be paid out of the Fund.

(3) Fifty per cent. of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.

[1][(3A) Notwithstanding anything contained in sub-section (3), fifty per cent. of such amount, as may be recommended by the Council, which remains unutilised in the Fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their base year revenue determined in accordance with the provisions of section 5:

Provided that in case of shortfall in the amount collected in the Fund against the requirement of compensation to be released under section 7 for any two months' period, fifty

[1] Inserted vide The Goods and Services Tax (Compensation to States) Amendment Bill, 2018 read with Notification No. 1/2019 – Goods and Services Tax Compensation dated 29.01.2019 - w.e.f. 01.02.2019.

per cent. of the same, but not exceeding the total amount transferred to the Centre and the States as recommended by the Council, shall be recovered from the Centre and the balance fifty per cent. from the States in the ratio of their base year revenue determined in accordance with the provisions of section 5.]

(4) The accounts relating to Fund shall be audited by the Comptroller and Auditor General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.

(5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament

11. Other Provisions Relating to Cess

(1) The provisions of the Central Goods and Services Tax Act and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of Central Tax on such intra-State supplies under the said Act or the rules made thereunder.

(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of Integrated Goods Tax on such inter-State supplies under the said Act or the rules made thereunder.

Provided that the input tax credit in respect of cess on supply of goods and services leviable under Section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said Section.

Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022[2]

Short title and commencement.-

1. (1) These rules may be called the Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022.

(2) They shall come into force with effect from the 1st day of July, 2022.

Period for levy and collection of Cess.-

2. The period for levy and collection of cess under sub-section (1) of section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 shall be up to the 31st March, 2026.

[2] *Inserted vide Notf. No. 01/2022-Compensation Cess dt. 24.06.2022*

Salient features of the GST Compensation Act:

I. Levy of cess:

- GST Compensation Cess (under section 8 of the Act) will be levied on all intra-State and inter-State supplies of goods or services or both, including import of goods.
- The cess shall be levied on supplies based on value, quantity or such rate not exceeding the rate stipulated in Schedule of the GST Compensation Act. The extract of this Schedule is as under:

S. No.	***Description of supply of goods or services***	***Tariff item, heading, sub-heading, Chapter, or supply of goods or services, as the case may be***	***The maximum rate at which goods and services tax compensation cess may be collected***
(1)	*(2)*	*(3)*	*(4)*
1.	*Pan Masala.*	*2106 90 20*	*135% ad valorem.*
2.	*Tobacco and manufactured tobacco substitutes, including tobacco products.*	*24*	*Rs. 4170 per 1000 sticks or 290 % ad valorem or a combination thereof, but not exceeding Rs. 4170 per 1000 sticks plus 290 % ad valorem*
3.	*Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated.*	*2701, 2702 or 2703*	*Rs. 400 per tonne.*
4.	*Aerated waters.*	*2202 10 10*	*15% ad valorem.*
4A	*Motor vehicles for the transport of not more than 13 persons, including the driver.*	*8702 10, 8702 20, 8702 30 or 8702 90*	*25 % ad valorem.*
5.	*Motor cars and other motor*	*8703*	*25 % ad valorem.*

	vehicles principally designed for the transport of persons (other than motor vehicles for the transport of ten or more persons, including the driver), including station wagons and racing cars.		
6.	*Any other supplies.*		*15 % ad valorem.*

- It may be noted that the actual rates of cess are provided vide *Notification No.1/2017-Compensation Cess (Rate) dated 28.06.2017*.

- The Cess would not be leviable on supplies made by a person who has opted for Composition levy.
- Those supplies that are liable to tax with reference to their value (i.e., all supplies except coal, briquettes and similar solid fuels), are to be determined based on the valuation provisions under section 15 of the CGST Act.
- The cess levied under this Act would be payable over and above the CGST, SGST/UTGST and IGST tax leviable on. Cess would be levied on whole value exclusive of GST i.e., for Transaction value as per section 15 is Rs. 100 and GST Rate is 18% then Cess would be levied on Rs. 100 Calculation would be Rs. 100+18% GST+ % Compensation Cess (as specified).
- The cess on goods imported into India
  - shall be levied and collected as per section 3 of the Customs Tariff Act, 1975,
  - at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962,
  - on a value determined under the Customs Tariff Act, 1975.
- **Dealer of second-hand goods:** The levy of Cess has been exempted on intra-State procurement of second-hand goods from an un-registered supplier when purchased by a registered person dealing in buying and selling of second hand goods and who pays the Cess on the margin basis of computation envisaged under rule 32(5) of the CGST Rules.
- **Old and used Motor Vehicles** : With effect from 13.10.2017, the Central Government reduced the rate of Cess to 65% which is otherwise payable on supply of motor vehicles which are purchased or leased before July 1, 2017 subject to the condition that such supplier has not availed input tax credit of Central Excise Duty or VAT or any other taxes paid thereon.

  With effect from 25.01.2018, as a further relief measure, the Central Government has prescribed 'NIL' rate of Cess on supply of all old and used motor vehicles on which

supplier has not availed CENVAT or VAT credit under the earlier regime or input tax credit in GST regime.

The scope and applicability of the notifications issued in respect of old and used motor vehicles (MV), can be better understood by a comparative analysis as summarised below:

Particulars	***Notification No. 7/2017– Compensation Cess (Rate) dated 13.10.2017***	***Notification No. 1/2018 Compensation Cess (Rate) dated 25.01.2018***
Scope	a. MV purchased and leased prior to July 1, 2017 which are continued to be leased in GST regime b. MV purchased prior to July 1, 2017 and supplied in GST regime	All old and used MVs Note: 1. Not applicable on lease transactions. 2. Can be purchased either before or after July 1, 2017
Rate of Cess	65% of Cess payable	NIL
Condition	Input tax credit (ITC) of Central Excise duty, VAT or any other taxes paid is not taken	ITC not taken in GST regime or CENVAT credit or VAT credit not availed in earlier regime

- **Refund of Cess upon Export:**

The exporter will be eligible to claim refund of Cess paid under the Act on export of goods on the similar lines as refund of IGST paid on exports. Further, Cess will not be charged on goods exported by an exporter under bond / LUT and refund of input tax credit of Cess relating to goods exported will be available on similar lines as refund of input taxes in relation to zero-rated supplies.

As per *Notification No. 3/2019 – Compensation Cess (Rate) dated 30.09.2019* for Tobacco and manufactured tobacco substitutes, no refund of unutilised input tax credit of compensation cess shall be allowed, where the credit has accumulated on account of rate of compensation cess on inputs being higher than the rate of compensation cess on the output supplies of such goods (other than nil rated or fully exempt supplies). Therefore, in case of inverted duty structure no refund is allowed.

II. Determination of Base Year Revenue:

- The Compensation amount to be paid in any year during the transition period is to be computed taking the base year as 2015-16 only.
- The provisions of section 5(1) of the said Act lists the taxes imposed by State / Union that stand subsumed into the GST while the proviso to Section 5(1) lists out the taxes

that shall not be included for calculation of base year revenue. The revenue collected by the States on account of the said taxed detailed in Section 5(1) of the Act alone would be considered for the determination of Base Year Revenue;

- The revenue collected would always be reckoned as 'net of refunds';
- The transition period will be the period of 5 years from the date when the respective SGST Acts commence.

III. Input Tax Credit and returns:

- Input tax credit on inward supplies liable to cess can be utilized only for payment of cess on outward supplies liable to cess under the Act.
- A taxable person effecting supplies chargeable to cess is required to file returns along with the returns prescribed under the CGST Act.

IV. General

- All provisions of the CGST Act and the IGST Act and the rules made thereunder, including input tax credit, assessment, appeals, offences, penalties, interest, non-levy and short levy will apply in relation to the levy and collection of cess on intra-State and inter-State supply, respectively.

******The Finance Act, 2023* **seeked to amend the Schedule to the Goods and Services Tax (Compensation to States) Act, 2017. The maximum rate at which GST Compensation Cess may be collected for items such as pan masala, tobacco and manufactured tobacco substitutes, including tobacco products have been revised and linked with retail sale price. Accordingly, a new explanation defining the scope of 'retail sale price' was proposed to be inserted therein.**

Amendments to the Schedule to the GST (Compensation to States) Act, 2017 brought into force from 1st April, 2023

Amendments made in the Schedule to the Goods and Services Tax (Compensation to States) Act, 2017 by section 163 of the Finance Act, 2023 have been brought into force w.e.f. 01.04.2023 vide *Notification No. 01/2023-Compensation Cess dt. 31.03.2023.* The Schedule has been amended to revise the maximum rate at which GST Compensation Cess shall be collected for items such as pan masala, tobacco and manufactured tobacco substitutes, including tobacco products and to link the same with retail sale price. A new explanation defining the scope of 'retail sale price' has also been inserted therein.

Further, *Notification No. 01/2017-Compensation Cess (Rate) dt. 28.06.2017* which specifies the rate of GST Compensation Cess on goods has been amended vide *Notification No.2/ 2023-Compensation Cess (Rate) dt. 31.03.2023.*

NOTE ON STATE GST LAWS & RULES

In the scheme of overall implementation of GST, the Parliament enacted Central GST Act, Integrated GST Act, Union Territory GST Act (which is a single law enacted by the Parliament in respect of all the 5 Union Territories without legislature). Ladakh will also be included along with Union territories without legislature and when it comes to State GST Acts, each of the State legislatures are to enact their respective State GST enactments and frame Rules thereunder.

As discussed in this background material in detail, on intra-State supply of goods or services, two levies would stand attracted, i.e., Central GST and State GST in case of States and Union Territories with legislature (Delhi, Puducherry and Jammu and Kashmir); Central GST and Union Territory GST in case of Union Territories (5 Union Territories). When the same transaction attracts two taxes, both the enactments should operate simultaneously. In that direction, the GST Council had provided to all the States, a version of State GST law for enactment in the respective States. It is needless to say that all the States have more or less followed the CGST Act to enact their State level GST laws. In respect of certain goods which still attract Value Added Taxes / Central Sales tax in respect of a transaction of sale, some States have still retained certain powers through the "repeal and savings provision" in the State Level GST enactments.

The GST law shall have two components: one levied by the Centre (referred to as Central GST or CGST), and the other levied by the States (referred to as State GST or SGST). Rates for Central GST and State GST would be approved appropriately, reflecting revenue considerations and acceptability.

The CGST and the SGST would be applicable to all transactions for intra State supply of goods and services made for a consideration except the exempted goods and services.

Cross utilization of ITC both in case of inputs and capital goods between CGST and SGST is not permitted.

The Centre and the States would have concurrent jurisdiction for the entire value chain and for all taxpayers on the basis of thresholds for goods and services prescribed for the States and the Centre.

All the States have passed their respective State GST Act whether through an ordinance or through the respective legislatures. On a perusal of the same it can be seen that almost all the provisions are identical to the provisions of the Central GST Act with suitable modifications as to State GST.

In this background material:

The rules are considered and discussed at appropriate places / sections / chapters. These rules are issued under the delegated legislation by the Central Government in so far as the CGST, IGST and UTGST laws are concerned whereas it is issued by the respective State Government when it comes to SGST law.

Special Category States under GST include:

1. Manipur
3. Mizoram
4. Nagaland
5. Tripura

With the effect of Finance Act 2018, from 1st February 2018, the states of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand shall no more be included in the expression "special category state".

Aggregate Turnover Limit for Registration as per CGST Act:

Section 22 of the CGST Act provides that every supplier shall be liable to be registered under this Act, in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover [refer 2(6) of the CGST Act] in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

W.e.f. 01.4.2019, if any person who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed forty lakh rupees is exempt from obtaining registration. In case of special category states, the limit in such case is twenty lakh rupees.

One can proceed based on the assumption that in the normal course the State GST Laws would be *pari materia* with the CGST Laws / Rules framed thereunder.

Exemption Notification applicability to State:

It is important to note that section 11 of each State GST law provides that every exemption notification issued by Central Government will automatically get apply to SGST Law. However, if any exemption notification issued by a State with due approval of GST Council, the same may not apply to CGST Act.



ISBN : 978-81-8441-869-9

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