ABHINAV JHA CA CLASSES

COMPREHENSIVE GUIDE TO

INDIRECT TAX LAWS

GST, CUSTOMS & FTP

CA FINAL
OLD & NEW

MAY 2020
NOV 2020 &

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Ch- 1 Basic Concepts under GST

Meaning Of Indirect Taxes

- Taxes paid by one but recovered from another person i.e. Consumer.
- Levied on Purchase/ Sale / Manufacture of Goods and Provision of Services.
- Tax burned is **Shifted to the subsequent user.**
- Indirect taxes are levied both by Central Government as well as by State Governments.
- Recently as a major reform, Goods and Services Tax (GST) has been introduced integrating large number of Central State Indirect Taxes in to a Single Tax System.
- GST subsumed 17 different types of Indirect taxes. But Customs Duty is not subsumed with GST

Some Important Definitions

Section 2 (94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

Section2 (103) "State" includes a Union territory with Legislature;

Section 2 (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.

Section 2 (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

Section2 (114) "Union territory" means the territory of—

- the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli; (d) Daman and Diu; (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

Note- Delhi & Puducherry SGST Act is applicable

Section 2 (4) (4) "Adjudicating authority" means any authority, appointed or authorized to pass any order or decision under this Act, but does not include the Central Board of ~~Excise~~ Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, "The national appellate authority For advance ruling", the Appellate Authority, Appellate Tribunal and the Authority Referred to in sub section (2) of section 171 NOV 2019 & MAY 20 AMENDMENTS

Section171. **Anti-profiteering measure**

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.
(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.
(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub- section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:
Provided that no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.
Explanation.— For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

Section 2 (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
Section 2 (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;
Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities

Section 2 (107) “taxable person” means a person who is registered or liable to be registered under section 22 or section 24;

Deficiencies in the Earlier Indirect Tax Regime

- Taxes levied by State Govt .were **not as set off** for payment of other taxes.
- **Variety of Taxes and Rates** with **disparate tax rates dissimilar tax practices**
- **Double Taxation:** Certain items are treated **both as a commodity as well as Services**
- The **creation of tariff and non-tariff barriers** hindered free flow of trade including **high compliance cost** for the taxpayers in the form of number of Returns, Payments.
- Non-integration of VAT & Service Tax

Constitutional Validity of GST Laws

1.Article 366(12A)- GST means “Any tax on supply of goods or services or both except taxes on supply of the Alcoholic Liquor for human consumption.

Note- In the case of tobacco and tobacco products, the centre alone would have to power to levy excise duty in addition to the GST

2. Article 246A- Concurrent powers to both Parliament and State Legislatures is given to make laws with respect to GST

3. Article 269A Provides exclusive power to the Parliament to legislate with respect to inter-State trade or commerce i.e. Integrated Tax(IGST**)**

Framework of Goods and Service Tax i. Common Laws under GST Structure

1.Central goods and service tax act, 2017

Tax shall be levied by CG On Intra state supply of Goods and services

2.State Goods and Service Tax Act,2017

Tax shall be levied by SG On Intra state supply of Goods and services

Note- On Intra state supply, there is two kinds of Levy, i.e CGST and SGST

3.Union Territory Goods and Service Tax Act, 2017

Tax shall be levied by UT On Intra state supply of Goods and services

Note- On Intra state supply, there is two kinds of Levy, i.e UTGST and SGST

4.Integrated Goods And Service Tax Act, 2017

Tax shall be levied by CG   On Interstate supply of goods and services. Though Levy and collection is responsibility of CG But Tax shall be apportioned between CG and SG

5.GST Compensation Cess Act,2017

Tax shall be levied by CG On Intra/inter State Supply of notified Goods And Services.

Basic Concept & principal of GST

1.GST is board- based value added tax i.e Tax on value addition only.

2.GST is a Destination based tax i.e Destination state is eligible to take State portion Revenue of Tax.

3.GST is technically paid by supplier but it is actually borne by consumers i.e concept of Indirect tax.

4.GST is collected at multiple stage of production and distribution of goods and services in which taxes payable on output.

5.GST is a tax on the consumption of products from business sources, and not on personal or hobby activities

6.Under GST, input tax credit is provided throughout the value chain for creditable acquisition

Benefits of GST

1.Creation of unified National market i.e One Nation one tax

2. Mitigating Cascading Effect though Input tax Credit concept

3.Elimination of multiple taxes and double taxation by subsuming various Indirect taxes

4.Make in India Initiative to promote National Market

5.Increase in Revenue for the Growth of Country

Various Taxes subsumed in GST

A)From Central Level Taxes

Central Excise Duty

Additional duties of excise

Excise duty levied under under Medicinal & Toiletries preparation Act.

Additional duties of customs (CVD & SAD)

Service Tax

Surccharges & Cesses

B) From State Level Taxes

State VAT/Sales Tax

Central sales Tax

Purchase Tax

Entertainment Tax (other than those levied by local bodies)

Luxury Tax

Entry Tax (All Forms)

Taxes on Lottery, betting & gambling Surcharges & Cesses

Various Taxes not subsumed under GST

Property tax and stamp duty

Electricity duty

Excise duty on Alcohol

Basic Custom Duty

Excise Duty on petrol Diesel

Existing Taxes to be continued to even after introducing GST

- **Central Excise Duty –** manufacturing of Tobacco, Petroleum Crude, Diesel, ATF & Natural gas.
- State Excise Duty – manufacture of Alcoholic Liquor, opium [Indian Hemp and Narcotics.
- VAT – On Intra – State of Petroleum Crude, Diesel, Petrol, ATF, Natural Gas & Alcoholic Liquor.

Tax on Tobacco and Tobacco Products

In the case of tobacco and tobacco products, the centre alone would have to power to levy excise duty in addition to the GST, Therefore at manufacturing stage both Excise duty and GST Shall be levied.

Recommendation of GST Council to the Union and the States on

- Taxes to be subsumed in GST
- Exemption in GST
- Model Goods and Services Tax Laws, Principles of levy, apportionment of goods and services tax levied on supplies in the course of inter-state trade or commerce under article 269A and the principles that governs the place of supply.
- The threshold limit of turnover for exemption
- The rates of GST
- Any other matter relating to the goods and services tax, as the council may decide**.**

Special Category of state

- Arunachal Pradesh
- Assam
- Jammu and Kashmir
- Manipur
- Meghalaya
- Mizoram
- Nagaland
- Sikkim
- Tripura
- Himachal Pradesh
- Uttarakhand

Manner of utilization of ITC in GST

1. CGST can be utilized first against CGST itself then IGST

2. SGST can be utilized first against SGST itself then IGST

3. IGST can be utilized first against IGST itself then CGST then SGST

Note - It should be noted that CGST cannot be used against SGST /UGST or Vice –Versa

Note- Section 49 of the CGST Act Order of utilization of ITC
ITC on account of SGST/UTGST can be utilized towards payment of IGST only where the balance of the
ITC on account of CGST is not available for payment of IGST
Note-New section 49A of the CGST Act ITC of IGST to be fully utilized first
ITC of CGST, SGST/UTGST should be utilised towards payment of IGST, CGST, SGST/UTGST only after the
ITC of IGST has first been utilized fully towards such payment
Note-New section 49B of the CGST Act Order of utilization of ITC
Government may, on the recommendations of the Council, prescribe the order and manner of utilization
of the ITC of IGST, CGST, SGST/UTGST towards payment of any such tax.

Section 3 of CGST Act Officers under this Act

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

Section 4 Appointment of officers.

4. (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.

Section5 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.

Section 6 Authorization 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 authorized 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 authorized 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.

Chapter2 Supply under GST

Section7 of IGST Act Inter-State supply.

- 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.
- 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.

  Note- Levy of GST on Imported Goods as per proviso to sec 5 (1) of IGST Act

  Levy Shall be levied and collected in accordance with the provision of section 3 of the Customs Tariff Act,1975(i.e.ACD3(7)&ACD3(9) On the value as determined under the Customs Act, 1962(i.e. as per sec 14) and collection shall be At the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.(i.e.as per Sec 15 of Customs Act,1962)
- 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.
- 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.
- 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.

Section8 of IGST Act Intra-State supply

- 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.

- 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 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.

Levy on Petroleum Products from Notified date

Supply of petroleum crude, high speed diesel, petrol, natural gas and ATF shall be levied from the notified date. still levy of GST on such products is not notified.

Note- As per Section9 (2) of CGST Act 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.

Rates under GST

CGST Rate	**0%**	**0.125%**	**1.5%**	**2.5%**	**6%**	**9%**	**14%**
SGST Rate	**0%**	**0.125%**	**1.5%**	**2.5%**	**6%**	**9%**	**14%**
Total	**0%**	**o.25%**	**3%**	**5%**	**12%**	**18%**	**28%**

Clarification in respect of goods sent/ taken out of India for exhibition or on consignment basis for export promotion MAY 2020 AMENDMENTS

a) Section 7 the activity of taking goods out of India on consignment basis for exhibition would **not in itself constitute a supply under GST since there is no consideration received at this time**. Even this supply is not covered under Schedule I i.e Deemed Supply without Consideration.

b) The movement of these goods out of India shall be accompanied by a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.

c) Since taking such goods out of India is not a supply, it necessarily follows that it is also not a zero-rated supply as per section 16 of the IGST Act. Therefore, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

d) The goods taken out of India in this manner are required to be either sold or brought back within a period of six months from the date of removal.

e) The supply would be deemed to have taken place if the goods are neither sold abroad nor brought back within the period of six months. In this case, **the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of the quantity of goods which have neither been sold nor brought back**. **The benefit of zero-rating, including refund, shall not be available in respect of such supplies.**

f) **If the specified goods are sold abroad, fully or partially, within the period of six months, the supply shall be held to have been effected, in respect of the quantity so sold, on the date of such sale. In this case, the sender shall issue a tax invoice in respect of such quantity of goods which has been sold**. These **supplies shall become zero-rated supplies** at the time of issuance of invoice. **However, refund in relation to such supplies shall be available only as refund of unutilized ITC and not as refund of IGST.**

g) **No tax invoice is required to be issued in respect of goods which are brought back to India within the period of six months**

Section9 of CGST Act Levy and Collection (Similar provision under Section5 of IGST Act)

(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 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.

(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) 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.

Why this Amendments

RCM Provision on supplies from unregistered person restricted to

- some specific class of registered person and
- for specific category of goods or services

(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.

Sec 2(17)of CGST Act "Business" Includes-

-
    - Any trade, commerce, manufacturer,
    - Profession, vocation,
    - Adventure,
    - Wages or
    - Any other similar activity,

Whichever or not it is for a pecuniary benefits (it mean intention to earn the profits is not a criterion in determining the states of business)

- Any activity or transaction in connection with or incidental or ancillary to sub-clause(a)
- Any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction
- Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business

Example: If covers purchase of capital asset or material before commencement of business or sale of stock or fixed asset at the closure of business.

- 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

- Admission, for a consideration, of person to any premises.

  .

- 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 vacation

- activities of a race club including by way of totalisator or a license to bookmaker or activities of a licensed bookmaker in such club

  (Earlier services provided by a race club by way of totalisator or a licence to book maker in such club) and

  Why this Amendment - Scope of activities of race club broadened under GST

- Any activity or transaction undertaken by the Central Government, a state Government or any local authority in which they are engaged as public authority

Section2 (56) of CGST Act “India” means

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

Section 2 (84) “person” includes—

- an individual; (b) a Hindu Undivided Family; (c) a company; (d) a firm; (e) a Limited Liability Partnership; (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013; (h) any body corporate incorporated by or under the laws of a country outside India; (i) a co-operative society registered under any law relating to co-operative societies; (j) a local authority; (k) Central Government or a State Government; (l) society as defined under the Societies Registration Act, 1860; (m) trust; and (n) every artificial juridical person, not falling within any of the above

Section 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.

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.

Since supply from DTA to SEZ is considered as inter-state supply, in fact a zero rated supply *(if it is for authorized operations)*

So where a person is having place of business both in DTA and SEZ, even though within the same state, then also he shall obtain separate registration for both the places.

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:

Provided that a person having multiple places of business ~~business verticals~~ in a State or Union territory may be granted a separate registration for each **such place of business ~~business vertical~~**, subject to such conditions as may be prescribed.

The effect of the above amendment is that from 1st February, 2019, the person who is having multiple places of business can obtain a separate registration for each place of business, however, the conditions prescribed under rule 11 of the Central Goods and Service Tax Rules, 2017 needs to be fulfilled.

(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..

Concept of Deemed Distinct Person Section 25(4)/(5)

(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

. (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 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.

(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, authorized 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:

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 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 (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.

Note- **Rule 41A inserted in the CGST Rules - Provisions for transfer of ITC where Registration taken for multiple places of business within a State/Union territory**
Registered person (transferor) who has obtained separate registration for multiple places of business and who intends to transfer, either wholly or partly, the unutilised ITC lying in his electronic credit ledger to any or all of the newly registered place of business, should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations. Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC would get credited to his electronic credit ledger. The ITC is transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration. Here, the 'value of assets' means the value of the entire assets of the business whether or not ITC has been availed thereon.

Note- **New threshold limit for registration**
I. Manipur, Mizoram , Nagaland , Tripura are States with threshold limit of ` 10 lakh for both goods and services
II. Arunachal Pradesh ,Meghalaya ,Sikkim ,Uttarakhand, Pundicherry,Telangana are States with threshold limit of Rs.20 lakh for both goods and services
III. For All other States of India including Jammu and Kashmir ,Assam ,Himachal Pradesh with threshold limit of ` 20 lakh for services and ` 40 lakh for goods.

Note-**GST New Rule 11: Separate registration for multiple places of business within a State or a Union territory (Chapter-III: Registration Rules)**
(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”

Note- **Rule 8(1) of the CGST Rules Separate registration for SEZ unit or SEZ developer**
A person having a unit in SEZ or being a SEZ developer shall have to apply for a separate registration, as distinct from his *place of business* located outside the SEZ in the same State or Union territory.
Note- This modified provision has been incorporated as second proviso to section 25(1) also.

Concept of CTP and NRTP

Definitions	Casual taxable person(CTP)- sec2(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; Occasionally undertakes	Non resident taxable person (NRTP) sec 2(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;

Meaning	transactions involving supply of goods or services in a state or UT where he has no fixed place of business	Occasionally undertakes transactions involving supply of goods or services but has no fixed place of business residence in India.
Registrations provisions	• Compulsory registration u/s 24 of CGST Act • Registration before commencement of business and with advance payment of tax • Normal Registration Application: GST REG-01 • PAN based GST Registration granted	• Compulsory registration u/s 24 of CGST Act • Registration before commencement of business and with advance payment of tax • Separate simplified registration application: GST REG-09 • GST registration granted without PAN
Threshold Exemption	Not Available	Not Available
Composition scheme	It is not available to casual taxable person	It is not available to non-resident taxable person
Return provisions	Normal Monthly Returns: GSTR-1, 2 and 3 However, annual returns is not required to be filed	• Separate Simplified Return: GSTR-5 • Also, annual return is not required to be filed
ITC provisions	Can claim ITC of all inward supplies (be it domestic/imported inputs, capital goods or input services)	• Can claim ITC only in respect of Goods imported by him [All other credits blocked for him-Sec 17(5) of CGST]

Note-

- CTP or NRTP will apply for registration at least 5 days prior to commencement of business

- Advance deposit of tax at the time of Submitting the registration application.

3. Registration is valid for 90 days (further extension for 90 days)

Section 7.of CGST Act The 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;**

(*b*) Import of services for a consideration whether or not in the course or furtherance of business; AND

Why this Amendments - Drafting error rectified.

(*c*) The activities specified in Schedule I, made or agreed to be made without a consideration; ~~AND~~

~~**(*d*) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.**~~

Why this Amendments- SCH-II does not decide whether a transaction is supply or not, rather it decides whether a supply is in nature of supply of goods or supply of services.

(*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 (New Inserted)**

Why this Amendments- SCH-II does not decide whether a transaction is supply or not, rather it decides whether a supply is in nature of supply of goods or supply of services.

(2) Notwithstanding anything contained in sub-section (*1*),—
(a) Activities or transactions specified in **Schedule III** (Transaction no treated as Supply) 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.
Notification 14/2017- Service by an activity in relation to Function Entrusted to a Panchayat under Article 243G and To Municipality under Article 243W of Constitution shall be treated neither as Supply of Goods nor Supply of Service.

(*3*) Subject to the provisions of 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.

Why this Amendments – Scope of supply broadened under GST

Note- Section(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;

Note- Section 2(17) Defined Business i.e in the course or furtherance of business (Already discussed in Chapter-1)

SCHEDULES TO CGST ACT 2017
First Schedule: Activities to be treated as Supply even if made Without Consideration
Second Schedule: Activities to be treated as Supply of Goods or Services
Third Schedule: Activities/ Transactions which shall not be treated as Supply of Goods or Service

Schedule I of Goods and Services Act, 2017

Supply of Goods/ Services without consideration [Deemed Supply]

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 people or between distinct people as specified in section 25,

Provided that gift 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.

Note-If Gifts of value more than Rs 50000 made without consideration are subject to GST, when made in the course or furtherance of Business. However, As per Para 1 of Schedule III services provided by an employee to the employer in the course of or in relation to his employment shall not be treated as supply of services

Note-As per Explanation to Section 15

(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 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;
(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.

Note-**Distinct persons** are persons with different GSTINs belonging to one legal entity (single PAN) situated within the same state or in two different states or in a different country
3. Supply of Goods –

(i)By a principal to his agent where the agent undertakes to supply such goods on behalf of the principal or (ii)By an agent to his principal where the agent undertakes to receive such goods on behalf of the principal

Note- All activities between principal and Agent is not covered here, only Supply or Receipt of Goods on behalf of Agent is covered in this Entry

Note- Where the Invoice for Further Supply is being issued by the Agent in his name then, any provision of this para shall apply. It means to apply this para Goods procurement or Supplied by Agent on behalf of Principal are Invoiced in the Name of Agent only.

Note-Section 2(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

Note-Section 24 Compulsory registration in certain cases Clause (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise

4. Import of Services without Consideration

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

Why this Amendments

An entity, even though not registered under GST, if receives services from their related parties located outside India, in course or furtherance of business, falls under an ambit of GST.

Schedule II to CGST Act 2017 (Activities or Transactions to be treated as Supply of Goods or Services

1. Transfer

(a) any transfer of the title in goods is a **supply of goods;**

(b) any transfer of 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**.

Note : sale of land & building not treated as supply as per schedule 3 other than construction intended for sale [of Para 5(b)]

3. Treatment or process
Any treatment or process which is applied to another person's goods is a **supply of services.**

4. Transfer of business assets
(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a **supply of goods** by the person;

Note: transfer of Business Assets without consideration

- If ITC taken supply as per schedule I
- If ITC not taken supply as per schedule II

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a **supply of services**;

(c) where any person ceases to be a taxable person, any **goods** forming part of the assets of any business carried on by him shall be **deemed to be supplied** by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services (Always)
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

(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, upgradation, enhancement, implementation of information technology software;

Note-

1.Customized software	Supply of services
2.Sale of Pre-packing software	Supply of Goods
3.License to use pre packed software	Supply of services

(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. 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.

U<u>Schedule III of Goods and Services Act, 2017 (Transaction not be treated as supply)</u>

1.. Services by an employee to the employer in the course of or in relation to his employment

Note- supply by the employer to the employee in term of contractual agreement entered into between the employer and the employee will not be subjected to GST. Example Perquisite, Allowance like Transport, Education etc as a part of Employment contract.

- Compensation for premature termination- Non taxable as it in relation to employment.
- Non compete fees received by an employee from employer- Taxable as it is not in the course of or in relation to employment.
- Casual labor appointment on daily basis for wages- Non taxable as it is also as employment contractSection9 Levy and Collection

2.Services by any court or Tribunal establishment under any law for the time being in force.

3(a) The functions performed by the member of parliament, Members of state legislature, Member of Panchayats, Member Of Municipalities and Member Of Other local authorities
3(b) The duties performed by any person who hold any post in pursuance of the provisions of the constitution in that capacity.
3(c) The duties performed by any person as a Chairperson or a Member or Directors in a body established by the Central Government or local authority

4. Services of funeral, burial, crematorium or mortuary Including transaction of the deceased

5. Sale of land and subject to clause (b) of paragraph 5 of schedule II, sale of building

a) Sale of land and Building- Not treated as supply as per sch III, No GST
b) Rental, Leasing licensing of land & Building- Treated as supply GST Payable
c) Sale of Building before completion certificate or 1PstP occupancy whichever earlier, Treated as supply as per para 5(b), sch II ,Hence GST is Payable

6. Actionable claims, other than lottery, betting and gambling

(i) Lottery, Betting, Gambling- Taxable supply liable to GST
(ii) Other Actionable Claims- Not treated as supply

New paragraphs inserted

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. 1 — For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

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.

Notification No. 25/2019 [MAY 2020 AMENDMENTS]

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

CBIC clarifies that 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, by State Government is neither a supply of goods nor a supply of service. this special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the 4Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts by individual donors. Circular No. 116/35/2019 **MAY 2020 AMENDMENTS**

No GST shall be applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.
For Examples:
a.) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.

b.)“Donated by Smt. Malati Devi in the memory of her father” written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

Supply of Goods or services by Employer to Employee

1.Schedule I Para 2 Supply of Goods or services or both between related people or between distinct people as specified in section 25,

Provided that gift 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.It means, If Gifts of value more than Rs 50000 made without consideration are subject to GST, when made in the course or furtherance of Business. However, As per Para 1 of Schedule III services provided by an employee to the employer in the course of or in relation to his employment shall not be treated as supply of services

Note-As per Explanation to Section 15 (a) persons shall be deemed to be “related persons” if––
such persons are employer and employee;

2.Schedule III Para 1. Services by an employee to the employer in the course of or in relation to his employment

Note- supply by the employer to the employee in term of contractual agreement entered into between the employer and the employee will not be subjected to GST. Example Perquisite, Allowance like Transport, Education etc as a part of Employment contract.

- Compensation for premature termination- Non taxable as it in relation to employment.
- Non compete fees received by an employee from employer- Taxable as it is not in the course of or in relation to employment.
- Casual labor appointment on daily basis for wages- Non taxable as it is also as employment contractSection9 Levy and Collection
- Perquisites are not liable to GST: services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST

GST on Transfer of Business Asset

1.Para 1 of Schedule I .Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2.Para 4(a) of Schedule II 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;

Note: transfer of Business Assets without consideration

- If ITC taken supply as per schedule I
- If ITC not taken supply as per schedule II

Section 8 of CGST Act 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

Note-Section 2(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;

Note- Section2 (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

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.

Example 1: A gift-wrapped box of chocolates. Here, the chocolates are the principal supply, while the box, gift wrapper, message card and gift wrapping service offered by the salesperson are supporting elements that cannot be supplied individually without the chocolates. This is a composite supply, and its GST rate will be same as the rate for the chocolates.

Example 2: A dealer sells a brand-new vehicle along with registration, insurance, a tool kit and first aid kit, and 4 free maintenance services. This is a composite supply, because vehicle insurance, registration and free maintenance services cannot be supplied without the vehicle (which is the principal supply).

Example 3. Booking train tickets: You are booking a Rajdhani train ticket which includes meal. It is a bundle of supplies. It is a composite supply where the products cannot be sold separately. You will not buy just the train meal and not the train ticket. The transportation of passenger is, therefore, the principal supply.
Example4 A works contract is a mixture of service and transfer of goods. For example, construction of a new building where a combination of materials like bricks, cement, sand along with services of labourers, engineers, architects etc. produce a building (goods).**It is a classic example of composite supply. But to avoid the confusion under earlier tax law, GST Act clearly clarifies** U**works contract**U **as a supply of service with specific tax rates.**

Example5 Restaurant business provides a bundled supply of preparation of food and serving the same. It is also a classic example of a composite supply. However, to avoid the confusion under earlier tax law, **GST Act clearly clarifies** UrestaurantsU as a supply of service with specific tax rates.

Note-How to determine if it is naturally bundled, i.e., it cannot be separated?

A. Ordinary Practice -The question of bundled supply in the ordinary course of business depends on the normal practices followed in the industry. Here are some ways to identify them:

1. If buyers mostly expect such services to be provided as a package, then the package will be treated as naturally bundled.

For example, most business conventions look for combination of hotel accommodation, auditorium and food.

2. If most of the service providers in the industry provide a package of services then it can be considered as naturally bundled. For example, air transport and food on board is a bundle offered by most airlines.

3. The nature of the various services in a bundle of services will also help to identify whether the services are bundled.

If there is a main service and the others are ancillary service then it becomes a bundled service.

For example, five- star hotels often provide free laundry services on staying at the hotel. Renting the room is the primary service and laundry is ancillary. A person can opt for laundry services only if he is staying at the hotel

B. Other indicators of bundling of services in the ordinary course of business (but they are not a foolproof identification):

– There is a single price for the package even if the customers opt for less

– The components are normally advertised as a package

– The different components are not available separately

(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.
Note-Mixed supply under GST means a combination of two or more goods or services made together for a single price.Each of these items can be supplied separately and is not dependent on any other
Note- Section 2(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.
Example1: A plant nursery sells cut flowers, ornamental plants, and gardening services together as a bundle. When they're sold separately, the plants and flowers incur GST at a rate of 5%, and the gardening services incur GST at a rate of 18%. When they're offered together as a bundle, the whole bundle will incur GST at the 18% rate.

Example 2 Many shops offer a free bucket with detergent purchased. This is a mixed supply as it does not satisfy the 2nd condition, i.e., it can be sold separately. You can buy either just a bucket or just detergent. The highest rate of GST will then apply. Since detergents have the higher rate (28%), this rate will apply on the whole mixed bundle.

Example 3- A Diwali gift box consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices supplied for a single price is a mixed supply. All are also sold separately. Since aerated drinks have the highest GST rate of 28%, therefore 28% will apply on the entire gift box.

Differences between mixed and composite supplies

Particulars	Composite Supply	Mixed supply
Main item	Principal item	Item with highest tax rate
Tax rate applicable	Tax rate of principal item	Highest tax rate of all the items

How to distinguish between composite supply and mixed supply

At first glance, composite supplies and mixed supplies may look very similar to each other.

Difference No.1 - Principal supplies — In a composite supply, one item or service is clearly the main part of the supply. In a mixed supply, no one part is necessarily the principal supply (though the part with the highest GST rate is treated as principal).

Difference No.2 - Individually available supplies — In a composite supply, it wouldn't make sense to sell the secondary parts separately from the principal supply (for instance, the towels provided along with a hotel room). In a mixed supply, each piece could be sold separately (for

instance, a grocery bundle containing an assortment of snacks and drinks)

MAY 2020 AMENDMENTS- CBIC clarification on the various issues in respect of goods sent out of India for exhibition or on a consignment basis for export promotion. ***Circular No. 108/27/2019***

(1) CBIC has clarified that the activity of sending the goods out of the India for Exhibition or on consignment basis for export promotion, except when such activity satisfies the test laid down in "Schedule I" of the CGST Act, **do not constitute supply** as the said activity does not fall within the scope of Section 7 of the CGST Act as there is no consideration at that point in time, Since the activity is not a supply, the **same cannot be considered as Zero-rated supply** as per the provision of Section 16 of the IGST Act.

(2)The registered person dealing in specified goods shall maintain a record of such goods as per the format prescribed at Annexure to this circular.

(3) The specified goods shall be accompanied with a **Delivery Challan** issued per the provision contained in rule 55 of the CGST Rules.

As it is not covered under Zero-rated supply, **execution of bond or LUT, as required under section 16 of the IGST Act, is not required**.

(4) The specified goods sent out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in sub-section (7) of section 31 of the CGST Act.

(5) The supply would be deemed to have taken place, on expiry of the six months from the date of removal, if specified goods are neither sold abroad nor brought back within the said period.

(6) The sender shall issue a tax invoice in respect of such quantity of specified goods which have been sold abroad. He will also require to issue an Invoice in the expiry of 6 months if goods are neither sold nor brought back into India, under the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.

(7) The said activity is not a Zero-rated supply, so the sender of goods cannot prefer any refund claim when the specified goods are sent out of India.

Chapter-3 Charges under GST

Section9 of CGST Act Levy and collection.

Forward Charge under GST i.e Supplier is liable to Pay tax

(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 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**.

Note -Supplier has to assess the tax & transfer tax burden to recipient but Supplier himself is liable to make payment to Govt for which Supplier has to register under GST . Supplier can pay ax Monthly [in some cases quarterly] by using Electronic credit ledger or Electronic cash ledger For payment Time of supply can be determined as under-

For Goods-Sec 12(2)of CGST

For Service -Sec 13(2) of CGST

(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.

Reverse Charge (RCM) under GST i.e Recipient is liable to Pay tax

(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.

Note- Section 2 (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 subsection (*4*) of section 5 of the Integrated Goods and Services Tax Act

Note- Recipient has to assess the tax and supplier will not charge GST in invoice, Here Recipient only is liable to make payment to Govt. for which Recipient has to register under GST, Recipient can pay GST Monthly [in some cases quarterly] by using electronic cash ledger only as recipient cannot use his electronic credit ledger for payment of GST on such notified supply.

After payment of GST under RCM, he can take input tax credit as per the provision of ITC . For payment Time of supply can be determined as under-

For Goods-Sec 12(3)of CGST

For Service -Sec 13(3) of CGST

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

Why this Amendments

RCM Provision on supplies from unregistered person restricted to

- some specific class of registered person and
- for specific category of goods or services

Payment by ECO

(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.

Note- In this case Supplier and recipient both does not assess the liability but ECO will assess the liability like supplier. ECO itself is liable to make payment to Govt. for which ECO has to register under GST,ECO Can pay GST Monthly [In some cases quarterly] by using Electronic credit ledger Or Electronic cash ledger. For payment Time of supply can be determined as under-

For Goods-Sec 12(2)of CGST

For Service -Sec 13(2) of CGST

Note - Sec.2(45): E Commerce Operator- mean any person who own, operates or manages digital or electronic facility or platform for electronic commerce.

Note-It has notified the following categories of services supplied through ECO for this purpose-

- **Transportation of Passengers by Cab Etc:**

  Service by way of transportation of passengers by a radio-tax, motor cab, maxi cab, and motor cycle. If Passenger transport by cab/motor cycle then all supplies made trough ECO shall covered here.(Whether supplier is Registered or not)

- **Renting of Accommodation by unregistered Hotels:**

  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 services through electronic commerce operator is liable for registration under section 22(1) of the CGST Act. If Supplier is registered under GST then such Supplier himself shall be liable to tax.

- **Services by unregistered plumber, housekeeper etc:-**

  services by way of house-keeping, 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. If Supplier is registered under GST then such Supplier himself shall be liable to tax.

Reverse Charge (RCM) under GST i.e Recipient is liable to Pay tax

Note : **The reverse charge provision as discussed in this chapter are also applicable under IGST Act, UTGST Act and SGST Act.**

A. Notified Goods for RCM

I. Any registered person as Recipient of supply is liable to pay tax if Supplier as Agriculturist Supplies

a) Cashew nuts, not shelled or peeled

b) Bidi wrapper leaves (tendu)

c) Tobacco leaves

d) Raw cotton

II. . Any registered person as Recipient of supply is liable to pay tax if supplier as Manufacturer supplies silk yarn from raw silk or silk cocoons for supply of silk yarn.

III. Any registered person as Recipient of supply is liable to pay tax if supplier as Central Govt. state Govt., Union territory or a local authority Supplies Used vehicle, seized and confiscated goods, old and used goods, waste and scrap.

IV. Any Lottery distributor or selling agent as Recipient of supply is liable to pay tax if supplier supplier as Central Govt. state Govt., Union territory or a local authority Supplies lottery License.

B. Notified Services for RCM

1 GTA Services

Supply of services in relation to transportation of goods by road by Goods Transport Agency Who has not paid central tax at the rate of 12 %(CGST 6% & 6% SGST) To notified person Where such person liable to pay freight.

Note- Notified person means

- Any factory registered under or governed by Factories Act,1948
- Any society registered under Societies Registration Act,1860 or under any other law for time being in force in any part of India
- Any co-operative societies establishment or under any;
- Any person registered under CGST Act, under IGST Act, under SGST Act or UTGST Act
- Anybody corporate established by or under any law or
- Any partnership firm (Including LLP)whether registered or not under any law including Association Of Persons
- Any Casual Taxable Person

Note-Reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-
(a) a Department/establishment of the Central Government/ State Government/ Union territory; or
(b) local authority; or
(c) Governmental agencies,
which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services. In these cases Even Exempted in hand of Recipient as per Exemption Notification.

<u>Note- Payment of GST @12%(6% +6%)with full ITC of GTA</u>

a)GTA services to any registered person under GST –GST is payable under normal charge by GTA

b)GTA services to any unregistered person

i.GTA services provided to notified Specified person above(a to g) –GST is payable under normal charge by GTA

ii.Service provided to any other unregistered person –Exempt

<u>Note- Payment of GST @5%(2.5+2.5) without ITC to GTA</u>

a.Service provided to registered person –Reverse charge is applicable & recipient who pays the freight is liable to GST

b.Services provided to unregistered person i.If services provided to notified person (above a to g) located in taxable Territory –Reverse charge is applicable above notified person is liable to pay GST

ii.If services provided to other unregistered person –Exempt

Note-As per Exemption Notification Exemption is available for services provided by a Goods transport agency to an unregistered person including an unregistered casual taxable person, other than following recipient, namely:-

- Any factory
- Any society
- Any co-operative society
- Any body corporate
- Any partnership firm whether registered or not under any law including AOP
- Any casual taxable person registered under GST Act.

2 Legal Service

Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly To Any business entity located in the taxable territory, then Person liable to pay tax is such business entity located in the taxable territory.

Note-:- “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.

3 Arbitral Tribunal

Services supplied by an arbitral tribunal to Any business entity located in the taxable territory Then, Person liable to pay Tax is such Business entity in taxable territory is liable.

Note- Services provided by an arbitral tribunal to any person other than a business entity is exempted from paying GST

4 Sponsorship Services

Services provided by Any person by way of **sponsorship** to any Body corporate or partnership firm located in Taxable Territory, then Person liable to pay tax is such body corporate or partnership firm in taxable territory is liable.

5 Government Services

Services supplied by Central Govt. / state Govt./Union territory /Local Authority to Business entity in taxable territory then such Business Entity shall be liable to tax under Reverse Charge.

Note- If business entity is in Non-taxable territory, then under normal change Govt./LA is liable to pay tax

Except

- Renting of immovable property(Subject to Entry 5A) and
- Some other Specified Services.

i) Services by the department of post by way of speed post, express parcel post, Life Insurance and agency services provided to a person other than central Government state Government or Union territory or Local Authority.

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

Note- In the above case CG/SG/UT/Local Authority will itself pay tax as Service Provider.

5A Other Government Services (Amendment via Notification issued by CBIC) 2019 Exam Amenment

Services supplied by the Central Government, State Government, Union territory or local authority **by way of renting of immovable property** to a person registered under the Central Goods and Services Tax Act, 2017 read with clause (v) of section 20 of IGST Act,2017,then Person liable to pay tax will be Any registered person in taxable territory

Note-

In case of Renting of immovable property

A) If Service provided to person registered, Then RCM is applicable and registered person is liable to pay tax

B) If Service to unregistered person, Normal charge is applicable

5B Transfer of development rights or Floor Space Index (FSI) Nov 19

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 to Promoter then such Promoter as Service Recipient shall be liable to Tax.

5C Long term lease of land

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 to Promoter then such Promoter as Service Recipient shall be liable to Tax.

6 Services by the Director:

Services supplied by a director of a company or a body corporate to the company or the body corporate then said company or a body corporate located in the taxable territory shall be liable to pay tax.

Note- Whole time director is Employee of the company, Hence As per Schedule III of Goods and Services Act, Service not to be treated as Supply.

Note- Non- Executive Director can't be called as employee of company. Hence sitting fees, commission is taxable.

7 Insurance Agent Service:

Services provided by an insurance agent to person carrying on insurance business, then such any person carrying on insurance business, located in the taxable territory shall be liable to pay tax.

8 **Recovery Agent Service**

Services provided by a recovery agent to a banking company or a financial institution or a non-banking financial company, then such Banking company or financial institution or a non-banking financial company, located in the taxable territory shall be liable to pay tax.

9 Copyright Service MAY 2020 Amendments

Sr. No.	Category of Supply of Services	Effective Date Period	Supplier of Service	Recipient of service
9	**Copyright Service –** Supply of Services by an author, music or the like by way of transfer or permitting the use or enjoyment of a copyright of a covered under clause (a) of sub-section (1) of Section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.	01.07.2017 to 30.09.2019	Author or music composer, photographer, artist, or the like.	Publisher, Music company, producer or the like, located in the taxable territory.
9	**Copyright Service by a music composer, photographer, artist or the like** 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.	01.10.2019	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory. ";
"9A	**Copyright Service by Author –** w.e.f. 1st October 2019 Supply of services by an	01.10.2019	Author	Publisher located in the taxable territory: Provided that nothing contained in this entry shall

	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.			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 Service Tax Act, 2017 under forward charge, and to comply with all the provisions of Central Goods and Service 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. ”;

Import of service

Any Service supplied by Any person from a non-taxable territory to Any person other than non taxable online recipient (NTOR), then Person liable to pay tax: Any person located in taxable territory shall be liable to pay tax.

Note- When any services provided by a person in non-taxable territory to a person in a taxable territory then it amount to import of services (Inter-state supply) and subject to IGST

Import Of Goods

In respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India by Person located in non-taxable territory to Importer then such importer as defined in clause(26) of section 2 of the Customs Act, 1962 located in the taxable territory shall be liable to pay tax.

10. Service to RBI

Supply of services by Members of overseeing committee to Reserve Bank Of India, then Person liable to pay tax is Reserve Bank Of India (RBI).

Note: Overseeing committee formed by RBI with aimed to vet resolution of all types of loans would harm customers as well as banks.

11 Services by DSAs

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) then such banking company or a non-banking financial company, located in the taxable territory shall be liable to pay tax.

12 Services by Business Facilitator (U**Notification No. 29/2018-C.T. (Rate) dated 31-12-2018**U. w.e.f. 1-1-2019)

Services provided by Business Facilitator (BF) to a banking company then such banking company, located in the taxable territory shall be liable to pay tax.

13. Services by an agent of Business Correspondent (BC) (U**Notification No. 29/2018-C.T. (Rate) dated 31-12-2018**U. w.e.f. 1-1-2019)

Services provided by an agent of Business Correspondent (BC) to Business Correspondent (BC) then such business correspondent, located in the taxable territory shall be liable to pay tax.

14. Security Services (U**<u>Notification No. 29/2018-C.T. (Rate) dated 31-12-2018</u>**U. w.e.f. 1-1-2019)

Security Services (services provided by way of supply of security personnel) provided by Any person other than a body corporate. to a registered person then such registered person, located in the "taxable territory shall be liable to pay tax.

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) Government 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.

Sr. No.	Category of Supply of Services	Effective Date Period	Supplier of Service	Recipient of service
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	01.10.2019	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.
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and	01.10.2019	Lender i.e. a person who deposits the securities	Borrower i.e. a person who borrows the securities under the Scheme through an

	Exchange Board of India ("SEBI"), as amended.		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	approved intermediary of SEBI.

Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997-
Circular No. 119/38/2019 MAY 2020 AMENDMENTS

CBIC has clarified that on supply of lending of securities for the period from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender. However, with effect from October 1, 2019, the borrower of securities shall be liable to pay GST under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM at rate of 18%.

Clarification on issue of GST on airport levies Circular No. 115/34/2019 MAY 2020

It is clarified that airlines need not pay GST on the Airport levies

i. Passenger Service Fee (PSF) and User Development Fee (UDF) are the amounts charges levied by airport operator but collected by the Airlines on behalf of the airport operator

ii. PSF & UDF are consideration for the services provided by Airport operators. Hence, they are liable to pay GST.

- Airlines should:
  - Satisfy the Pure-agent conditions
  - Issue invoice showing the value of PSF&DSF along with the GST component of the same
  - Pay GST on the ticket charges excluding the PSF & DSF
  - Pay GST on the collection charges received from Airport operators

Ch 4 Section 10 Composition Scheme and NN 2/2019 Scheme

Important Definitions

Aggregate Turnover

Section 2 (6)of CGST Act "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.

Note- Order No. 01/2019 -Interest income to be excluded while computing aggregate turnover for
determining eligibility for composition scheme. Interest income not to render a person ineligible for
composition scheme

Turnover in State/UT

Section2 (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

Note- This definition is same as aggregate but difference is only of that state mean interstate with same PAN not included

Exempted Supply

Section 2 (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 nontaxable supply

Taxable Supplies

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

Non-taxable supply

Section 2 (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
Turnover in State/UT

Provisions related Composition levy.
Section10. (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, 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 (NN 03/2019), but not exceeding,—
(a) 1 per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,
(b) 2.5 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) 0.5 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:

Why this Amendments
Word under sub-section (1) of section 9 inserted because it was drafting error. Earlier it was interpreted that composition dealers were unintentionally not liable for pay tax under RCM.

Rates under composition scheme Notification No. 03/2019
Under composition scheme, a (i) manufacturer, (ii) restaurant service provider and (iii) any other
supplier eligible for composition levy, is required to pay tax @ (i) ½%5, (ii) 2½%6 and (iii) ½%7 respectively.
Earlier, tax rate under category (iii) was ½% of turnover of taxable supplies of goods (Now goods and
services) in the State or Union territory.

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council.
Why this Amendments
Power to increase composition limit enhanced

Turnover limit for determining the eligibility for composition scheme
8 Special Category States -Arunachal Pradesh, Uttarakhand, Manipur, Meghalaya, Mizoram, Nagaland,
Sikkim and Tripura is ` 75 lakh
3 Special Category States – Assam, Himachal Pradesh and Jammu and Kashmir and Rest part of India
had higher eligibility turnover limit of ` 1.5 crore.

Note- Once the aggregate turnover of a registered person exceeds the limit he shall immediately liable to pay tax @ normal rates as specified by GST Act & therefore all the regular provisions of Act shall become applicable from therein.

"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.

Why this Amendments

Composition dealer may also provide other services upto 10% of their total turnover or Rs. 5 Lakh whichever is less.

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) save as provided in sub-section (1) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;

(b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;

(c) he is not engaged in making any inter-State outward supplies of goods;

(d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council. And

(f) he is neither a casual taxable person nor a non-resident taxable person

Note- Registered person shall be eligible to opt composition scheme, if he is not engaged in –

(a) Supply of services other than supplies mentioned in schedule II, Para 6(b)
(b) Supply of goods are not leviable to tax
(c) Making inter-state outward supplies
(d) Making supply of goods through an ECO who is required to collect tax at source
(e) Manufacture of Ice Cream, Pan masala and Tobacco

Note- Supplier opting for composition scheme,shall-

- Not to be engaged in manufacture of specified goods[Ice-cream, pan masala and Tobacco AND Aerated Water (Inserted vide CGST(R) notification no. 18/2019 dated 30th September'19

1.]
2. Not to be a Casual Taxable Person/Non-resident
3. Not eligible for input tax credit
4. Not to issue a Tax Invoice and collect GST[instead to issue Bill Of Supply]
5. Mention the details and status of composition Dealer on Bills and Boards

(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 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 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 subsection.";

Provided that where more than one registered persons are having the same PAN, 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.

(3) The option availed of by a registered person under sub-section (1) 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) sub-section 2A as the case may be.

(4)A taxable person to whom the provisions of sub-section (1) as the case may be subsection 2A 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) 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.

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 upto 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 upto 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.'.

Circular No. 77/51/2018 Effective date in case of denial of composition option by tax authorities

It has been clarified that the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules.

Note- Intimation for composition levy shall be given electronically within 60 days of the date of opting for composition levy on the common portal along with Details of stock, including the inward, supply of goods received from unregistered person, held by him on the day preceding the date of opting composition scheme.

Note Order No. 01/2017

If a person supplies goods and or services referred to in clause(b) of Para 6 of Sch II of the said Act (restaurant service) and also supplies any exempt services includes services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest discount,The said person shall not be intangible for the composition scheme under section 10 of CGST Act subject to the fulfillment of all other conditions specified therein.

Has 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.

Notification No. 2/2019 Option to pay concessional tax @ 3%
As per the notification, persons who had an aggregate turnover of less than Rs.50 lakhs in the preceding financial year can enroll under the scheme and pay a flat 3% CGST on the first 50 lakhs of supply of goods or services.

Eligibility

To be eligible under the scheme, the supplier must meet the following conditions:
1. Should have less than Rs.50 lakh aggregate turnover in the previous financial year or should be obtaining GST registrationin the current financial year.
2. Should not be supplying any goods or services that are exempt from GST
3. Should not be involved in the making inter-state supply (Selling goods/services from one state to another state).
4. Should not make any sale through eCommerce operator
5. Should not be involved in the supply of ice cream, pan or tobacco , Aerated Water (Inserted vide CGST(R) notification no. 18/2019 dated 30th September'19
6. Should not be a casual taxable person or non-resident taxable person
7. Should not be enrolled under GST composition scheme.

Requirements Post Enrolment

If the supplier satisfies the above conditions and enrolls under the scheme, the following conditions must be fullfilled:
1. Should not collect any GST from customers
2. Should not claim any GST Input Tax Credit
3. Should issue Bill of Supply NOT GST Invoice
4. The top of the Bill of Supply should contain the words "'taxable person paying tax in terms ofnotification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies"
5. Should pay a flat 3% cental goods and services tax on all supplies
6. Pay GST as applicable on all purchases made

Manufacturer of aerated water & supplier of aerated water cannot opt to pay tax under composition levy and Notification No. 2/2019 [MAY 2020 AMENDMENTS]

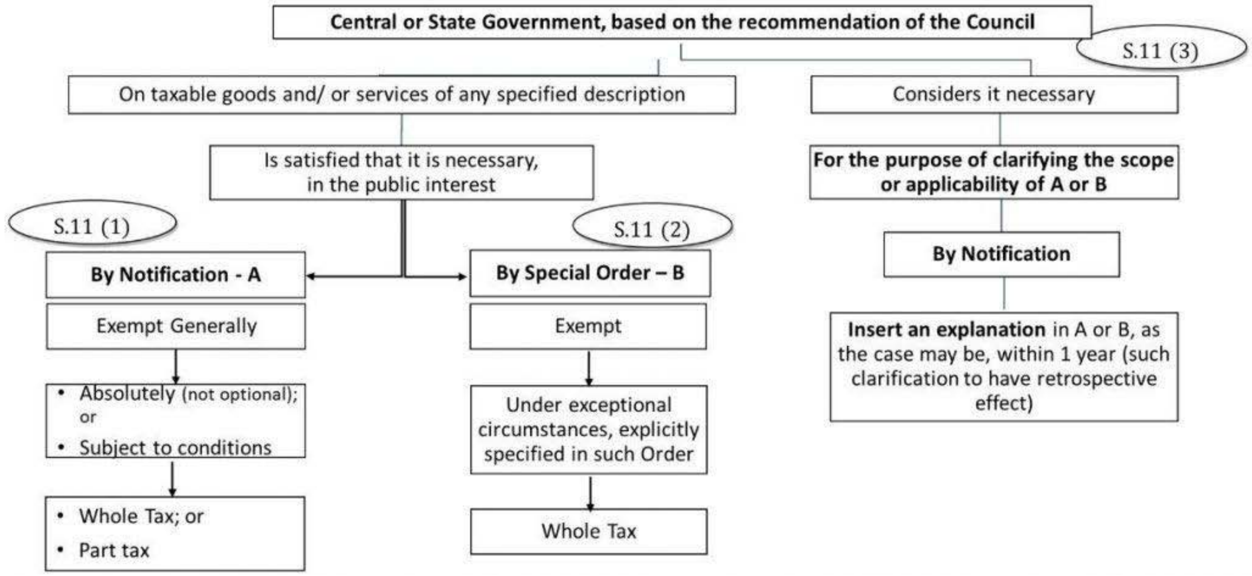
Notification No. 43/2019 Persons who are engaged in making supplies of the specific goods listed below are disallowed from taking registration as a service provider under the composition scheme notified.

- Ice cream and other edible ice, whether or not containing cocoa
- Pan Masala
- All goods, i.e. Tobacco and manufactured tobacco substitutes
- Aerated Water (Inserted vide CGST(R) notification no. 18/2019 dated 30th September'19

Likewise, a supplier of these goods, will also not be eligible to pay concessional tax under Notification No. 2/2019

Hence, a manufacturer or supplier of aerated water will be taxed at the rate of 28% under Normal Scheme as per section 9(1),but will be eligible for the input tax credit.

Ch 5 Exemption under GST



Clarification on the effective date of insertion of explanation in notification

Section 11 Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council	
(1) 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) 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 subsection (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	
Circular No. 120/39/2019 CBIC Clarification MAY 2020 AMENDMENTS The explanation having been inserted u/s 11(3) CGST Act, is effective from the inception of the entry. The line in Notification mentioning effective date of notification does not alter the operation of the notification in terms of Sec.11(3).	

A. Common Exemptions

A list of items have been notified under section 11(1) of the CGST Act, 2017/section 6(1) of the IGST Act, 2017 which are exempted from whole of the tax. Everyday items used by the common man have been included in the list of exempted items such as unbranded atta/maida/besan, unpacked foods grains, milk, eggs, curd, lassi and fresh vegetable etc.

Difference between General Exemption & Special Exemption		
Points	**General Exemption**	**Special Exemption**
1	**Covered under Sec. 11(1)**	**Covered under Sec.11(2)**
2	**It is given by Govt. in the public interest by notification in official Gazette**	**It is given by govt. in public interest by special order**
3	**It is applicable to all members of a particular section**	**It is applicable in each case i.e. applicable to that person to whom the order is given**
4	**It is generally in public interest**	**It is given in exceptional nature (charitable purpose goods of strategic nature etc.) which is necessary in public interest**

Meaning of Mandatory Exemption

Where an exemption is respect of any goods or services or both form the whole or part of the tax leviable thereon has been granted absolutely, without any condition 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.

B. Other Exemptions

I. Exemption related to Health Care Sectors

a)Health care or Animal or Birds Service by Birds Service by Veterinary Clinic

b)Preservation of stem call by cord blood banks

c) Services by way of:

(i) "Healthcare Services by a Clinical Establishment or Authorized Medical Practitioner or Para medics;

(ii) Services provided by way of transportation of a Patient in an ambulance, other than those specified in (i) above

Note- H**ealth care services** has been defined as any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma

d) Treatment of disposal of bio-medical waste of clinical establishment by operators

II. Exemption Charitable and Religious Sector

a) Charitable Activities Includes Yoga Service Provided by entity registered under Sec 12AA of the Income Tax Act 1961.

b) Religious Activities- conduct of Religious ceremony

c) Renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust. No Exemption in certain case –

i) Renting of Rooms where charges are Rs 1000 or more per day

ii) Renting of Premises, Community halls, kalyanmadapam or open area and the like where charges are Rs 10,000 or more per day

iii) Renting of shops or other spaces for business or commerce where charges are Rs 10,000 or more per month

d) Service provided by specified organization with respect to kailash Mansarovar and Haj Pilgrimage exempted.

III. Exemptions from GST in Legal Sector

A)<u>Service provided by Arbitral Tribunal :</u>

1. To business entity

a)If Aggregate Turnover of business entity upto ~~Rs 20 Lacs~~ such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017; - Exempt
b)If Aggregate Turnover of business Entity more than ~~Rs 20 Lacs~~ **such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017** -Taxable [under RCM business Entity is liable]

2. To Non business entity - Exempt
3. Central Govt. State Govt., UT., Local Authority Govt. Entity - Exempt

<u>B)Service provided by individual advocate or firm of advocate other than Senior Advocate</u>:

1.To Business entity

a)where Aggregate T/O of business Entity up to ~~Rs 20 L~~ **such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017** – Exempt

b). where Aggregate T/O of business Entity more than ~~Rs 20 L~~ **such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017** –Taxable [under RCM business entity is liable]

2.To Non Business Entity –Exempt

3.To another individual advocate or firm of advocate –Exempt

c)Central Govt., State Goct., UT, local authority govt. entity –Exempt

C)Service provided by Senior advocate:

1.To Business Entity

a) where Aggregate T/O of business Entity ~~up to 20 L~~ **such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017** –Exempt
b) where Aggregate T/O of business Entity more than ~~Rs 20 L~~ **such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017** –Taxable [Under RCM business Entity is liable]

2.To Non Business entity –Exempt

3.To Another individual advocate or firm of advocate –Taxable but advocate/firm can take exemption upto turnover ~~20 lacs~~ **such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017** as a business entity

4.Central Govt. State Govt., UT., Local Authority Govt. Entity –Exempt

IV.Exemptions from GST relating to Renting of Immovable Property

a)Services by way of renting of residential dwelling for use as residence.

b)Services by way of a Hotel, inn, guest house, club or campsite by whatever name called for residential or loding purposes, having declared tariff of a unit of accommodation below **or equal to** Rs 1000/- per day or equivalent. May 2020 Amend

V. Exempted from GST related to Entertainment Sector

a)Services by an **artist** by way of performance in **folk or classical art** forms of *Music, dance or theater* if the **consideration charged** for such performance is **not more than Rs 1,50,000** (Exemption not applicable to services provided by Brand Ambassador).

b)Services by way of **right to admission** to –

Circus, dance or theatrical performance including drama or ballet, Award function, concert, pageant, musical performance or any sporting event other than recognised sporting event, Recognized sporting event and Planetarium , Where the **consideration for admission is not more than Rs 500/- per person.**

c)Services by way of **admission** to a museum, national park, wildlife sanctuary, or tiger reserve or zoo.

d)Services by way of **training or coaching** in recreational activities relating to Arts or Culture, or Sports by Charitable entities registered under sec 12AA of the Income Tax Act.
e) Admission to protected Monument under Ancient Monument & Archaeological site & Remains

VI. Exemptions from Transport Sector

If following goods are transported by GTA/Rail or Vessel then exempted from payment of tax :

1) Agriculture product
2) Organic manure
3) Relief material for victims
4) Milk, salt, food grains, flours, pulses or rice
5) Newspaper or Magazines
6) Defense or Military equipments

A) By Road

Passenger Transport

i) AC Stage Carriage is taxable where as Non AC Stage carriage is not taxable

ii)AC Bus is always taxable where as Non AC Bus is taxable where it is used for Tourism i.e Conducted tour or charter or hire .It means Non AC bus if used for point to point transportation i.e non tourism purpose then Exempted from GST.

iii) Motor cabs and Radio Taxi are always taxable whether AC Or NON AC

iv) Meter cabs, Auto Rickshaw is exempted

Goods or Service Transport

Through GTA courier is Taxable and Other Road Transport is Exempted.

Basic exemptions to GTA :

Transportation of the following goods by a goods transport agency have been exempted from service tax

(a) Goods, where consideration charged for transportation of goods on a consignment transported in a single carriage does not exceed Rs 1500
(b) Goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs 750

B) By Rail

Passenger Transport

i) In case of Rail only 1PstP class or AC Coach is taxable

ii) Metro rail , Monorail or Tramway services are always Exempted whether AC Or Not

Goods or Service Transport

By Rail always taxable.

C) By Water

Passenger Transport

i) Vessel is only taxable when predominantly used for Tourism ,not taxable if used for other purpose

ii) Inland waterway Transportation is always Exempted.

Goods or Service Transport

i) Vessel (See point E)

ii) Inland waterways is always Exempted.

D) By Air Passenger Transport

In case of Air, If passenger embarking or terminating in state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, etc North eastern state then only Exempted otherwise Taxable.

E) Air / Vessel – Goods Or Service

i) From Outside India to Custom Station in India- By Air Exempted and By Vessel always Taxable
ii) From one Custom Station in India to another is always taxable.
iii)From Custom Station in India to place outside India (By Air/Vessel), Exempted up to notified date i.e upto ~~30.09.2019~~ 30.09.2020 MAY 2020 Amendment

F) Pipeline or Conduit -– Goods Or Service

Always Taxable

VII. Exemption in agriculture sector

Agriculture means Cultivating of plants and Rearing of all life forms of animal, except the rearing of horses For Food , fiber , fuel, raw material, or Other similar product

Agricultural produce: means any product of agriculture on which Either no processing is done or Such processing is done as is usually done by a cultivator or producer Which does not alter its essential characteristic but makes it marketable for primary market.

Agriculture Extension: means application of scientific research and knowledge to agricultural practice through farmer education or training;

Following process are exempted

a) Agriculture operational directly related to production of any agriculture produce including cultivation, harvesting, threshing plant protection or seed testing ;
b) Supply of farm labour;
c) Processes carried out at an agriculture farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential

characteristic of agriculture produce but make it only marketable for the primary market;

d) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
e) Loading, unloading, packing, storage or warehousing of agricultural produce;
f) Agriculture extension services;
g) Service by any agriculture produce marketing committee or Board or services provided by a commission agent for sale or purpose of agriculture.
h) Services by way of fumigation in a warehouse of agricultural produce

VIII. Exemption related to Agriculture

i). Exemptions on intermediate production processes-Carrying out an intermediate production process as job work in relation to agriculture.

ii) Fumigation in warehouse

iii) Service by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing , labeling of fruits and vegetables.

iv) Service of loading, unloading warehousing packing storage of Rice

IX. Exemption In Banking And Financial Sector

Service 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) interstate sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers

Provided Services by an acquiring bank, to any person in relation to settlement of an amount up to Rs 2000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

X. Exemption In Education Sector

"Approved vocational education course " mean;

A course run by industrial training institute or an	A modular Employable skill course, approved by the	Education as a part of an approved vocational

industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational training offering courses in designed trades notified under the Apprentices Act, 1961 or	National council of vocational Training, run by a person registered with the Directorate General of Training, Ministry of skill Development and Entrepreneurship	education course

Introduction

The word "Education" has not been defined under the CGST Act, 2017. However, the Apex Court decision in the case of "Loka Shikshana Trust vs CIT" has decided that education is process of training and developing knowledge, skill and character of students by normal schooling

Taxing the Education Sector has always been a sensitive issue, as education is seen more as a social activity than a business one. The Right of Children to Free and Compulsory Education Act, 2009 has made education not only compulsory but has also made the Govt. responsible to provide education at economical rates.

Thus, to promote education, it educational services has been exempted from tax. However, commercialization of education is also a reality. The distinction between core and ancillary education is hiding and education is now an organized industry with huge revenues. The GST Act tries to keep a reasonable balance whereby core educational services provided and received by educational institutions are exempted and other services are sought to be taxed at the standard rate of 18%.

Exemption under GST

Under the GST regime, core educational services has been exempted vide Notification No. 12/2017-CT(R) dated 28 June 2017/ Notification No. 09/2017-IT(R)as amended from time to time (hereinafter referred to as 'the exemption Notification'). The exemption entries is reproduced as under:

Entry 66 Services provided –
(a) by an educational institution to its students, faculty and staff;
(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;
(b) to an educational institution, by way of, –
(i) transportation of students, faculty and staff;
(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;

(iii) security or cleaning or housekeeping services performed in such educational institution;
(iv) services relating to admission to, or conduct of examination by, such institution;
(v) supply of online educational journals or periodicals;

Provided that nothing contained in entry (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre- school education and education up to higher secondary school or equivalent.
Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of:-
(i) Pre-school education and education up to higher secondary school or equivalent; or
(ii) Education as a part of an approved vocational education course.

Entry 67
Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme: –
(a) 2 year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;
(b) fellow programme in Management;
(c) 5 years integrated programme in Management
Note- On perusal of the aforementioned Entry No. 66, it is observed that only certain specified services provided by/to an educational institution are exempt. Thus, services specified under entry no. 66 are exempted only when the same are provided by/to an institution which qualifies the definition of an 'educational Institution'.

"Educational institution means an institution providing services by way of:

(i) Pre-school education and education up to higher secondary school or equivalent;

(ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

(iii) Education as a part of an approved vocational education course."

The sub-clause (i) within the meaning of Educational institutions provides that Schools including play schools imparting education by way of pre-school education and education up to higher secondary school or equivalent shall be treated as Educational institutions. Thus, schools including play schools do not suffer GST on output services and also on most of the important input services (such as transportation of students/staff, security services, examination services, catering services). Some of the input services like canteen, repairs and maintenance etc. provided by private players to educational institutions were subject to service tax in pre-GST era and the same tax treatment has been continued in GST regime.

The sub-clause (ii) within the meaning of Educational institutions covers institutions providing services by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force. Doubts have continued as to what would be the meaning of "education as part of curriculum for obtaining qualification recognized by law" under GST. GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 can be gainfully referred to understand the meaning of the term which reads as under:

What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'?

It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

X. Exemption In Sports Sector

i) Service provided to recognized sport Body by –

An individual as a player, referee, umpire, couch or team manager for participation in a sporting event organized by a recognized sports body

Another recognized sports body;
ii) Sponsorship of certain sports events
iii) Admission to event organized under FIFA world cup 2017

Service provided by Government to Business Entity

i)All services by Reserve Bank Of India
Note- Services provided to Reserve Bank Of India is Taxable service;

ii) All services provided by a foreign diplomatic mission located in India
Note- service provided by office or establishment of an international organization is Taxable Service.

iii) Services by the Central Government, state Government, Union territory or Local authority excluding the following services-

(a) Services by the department of posts by way of
   - Speed post

- Express parcel post,
- Life insurance and
- Agency services provided to a person other than the central Govt. state govt. UT.

(b) Service in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(c) Transport of goods or passengers; or

(d) Any service, other than services covered under entries (a) to (c) above, provided to business entities

iv) Service provided by Govt. Local authority to business entity where its aggregate T/O ~~less than 20 Lacks (10L for SCT)~~ is up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017. MAY 2020

Exemption: above exemption not available to

I. Services by the Central Government, state Government, Union territory or Local authority excluding the following services-

(e) Services by the department of posts by way of

- Speed post
- Express parcel post,
- Life insurance and
- Agency services provided to a person other than the central Govt. state govt. UT.

(f) Service in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(g) Transport of goods or passengers; or

(h) Any service, other than services covered under entries (a) to (c) above, provided to business entities

II. Renting of immovable property

Note- **New threshold limit for registration**

I. Manipur, Mizoram , Nagaland , Tripura are States with threshold limit of ` 10 lakh for both goods and services

II. Arunachal Pradesh ,Meghalaya ,Sikkim ,Uttarakhand, Pundicherry,Telangana are States with threshold limit of Rs.20 lakh for both goods and services

III. For All other States of India including Jammu and Kashmir ,Assam ,Himachal Pradesh with threshold limit of ` 20 lakh for services and ` 40 lakh for goods

v) Service provided by Govt/Local authority Where GAC per service (per invoice) does not exceed Rs 5000

In case where continuous supply of service the exemption shall apply only where the consideration charged for such service does not exceed Rs 5000 in a financial year.

Exemption: above exemption not applicable to Service covered under above clause (a) to (c**)**

vi) Service provided by Govt/ Local authority by way of issuance of passport, visa driving licence , Birth Certificate or Death Certificate.

vii) Service provided by Govt/ Local Authority by way

(a) Registration required under any law
(b) Testing, calibration, safety, check for protection of safety of worker, consumer or public at large

viii) Assignment of right to use natural resources to an individual farmer for the purpose of agriculture.

ix) Assignment of rights to use natural resources given before 1-4-16 and Allowing to operate as telecom service provider or use radio frequency spectrum prior to 1-4-16.

x) Service provided by Govt. or Local Authority to another Govt. or Local Authority

xi) Fines or liquidated damage for tolerating non-performance of contract

xii) Merchant overtime charges for inspection of import container by custom officers.

Service Provided <u>to Government</u>

i) Service provided by Fair price shop
ii) **Service by GSTN for implementation of GST**

iii) Service for a functions entrusted under article 234G Municipal & 243W Panchayat

Service to Govt. by way of any activity in relation to article 243G or 243W

iv) Insurance scheme where total premium is paid by government

v) Training program to Government where total expenditure is bourn By Govt.

vi) Passenger transport service by air where boarding or termination at a regional connectivity scheme, Airport avails the consideration in the form of viability gap finding

vii) Service provided by employees of state Insurance Corporation

Other Mislenious Exemptions

1.Service provided by employee provident fund org. (EPFO) to person governed under the employees provident fund and Miscellaneous Provisions Act, 1952

2.Service provided by IRDA to insures under the insurance regulatory and Development Authority of India Act, 1999

3.Service provided by SEBI by way of protecting the interest of investors in securities and to promote the development of and to regulate, the securities market

4.Service provided by National Center for cold chain development under Ministry of Agriculture, co operations and farmers welfare by way of cold chain knowledge dissemination

5.Service by way of collection of contribution under any pension scheme of the state Government

6.Service of leasing of assets (rolling stock assets including wagons, choches, locos) by the Indian Railways finance corporation to Indian Railways

7.Service by way of giving on hire-

- **(a) To a state transport undertaking, a motor vehicle meant to carry more than twelve passengers or**
- **(b)**) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers; EOV means vehicle falling under Chapter 87 in the First Schedule to the

Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle. MAY 2020 Amendments

(c) To a goods transport agency, a means of transportation of goods

8.Nov 2019 Amend Service provider by IIM(read from notes)-Deleted

9.By way of collection or providing news by-

- **An independent journalist,**
- **Press trust of india or**
- **United news of india**

10.Service by housing societies up to an amount of 7500 per month per member for sourcing of goods or service from a third person for the common use of its member in a housing society or a residential complex.

11.Entry 39 Intermediary service

12.Organization of business exhibition outside India

13.Slaughtering of Animal

14.Service received from service provider located in non-taxable territory to

a) **Government / Central Govt./ Union Territory, a local authority or an individual in relation to any purpose other than commerce, industry or any other business or profession**
b) **An entity registered under section 12AA of the Income Tax Act, 1961 for the purpose of providing charitable activities or**
c) **A person located in a non-taxable territory.**

Provided that the exemption shall not apply to –

(i) **Online information and database access or retrieval services received by person specified in clause (a): or**
(ii) **Service by way of transportation of goods by a vessel from a place outside india up to the customs stations of clearance in india**

Transfer of a Going Concern

MAY 2020

New Entry-Services provided by & to FIFA and its subsidiaries is Exempted from GST subject to condition **Director (Sports), Ministry of Youth Affairs and Sports have to certify that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020**

Services by way of storage/ warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.

Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force

Public Service: by way of public convenience such as provision of facilities of bathroom, washroom, lavatories, Urinal or Toilets

Management of Foreign exchange reserve to RBI by Global Financial Institution

Service by Indian tour operator to foreign tourist for tour conducted outside India

Service to protected monuments under Ancient Monument Act, 1958

Service by way of providing information under right to Information Act,2005

Service by way of reinsure

Service by an intermediary of financial services

Supply of services having POS in Nepal/Bhutan..

Services of general insurance business provided under following schemes is exempted under GST

1. Janashree Bima Yojana

2. Aam Aadmi Bima Yojana

3. Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of two lakh rupees

4. Varishtha Pension Bima YOjana

5. Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY)

6. Pradhan Mantri Jan Dhan Yojana (PMJDY)

7. Pradhan Mantri Vaya Vandan Yojana (PMVVY)

8. Hut Insurance Scheme

9. Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme)

10. Scheme for Insurance of Tribals

11. Janata Personal Accident Policy and Gramin Accident Policy

12. Group Personal Accident Policy for Self-Employed Women

13. Agricultural Pumpset and Failed Well Insurance

14. premia collected on export credit insurance

15. Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture

16. Jan Arogya Bima Policy

17. Pradhan Mantri Fasal Bima Yojana (PMFBY)

18. Pilot Scheme on Seed Crop Insurance

19. Central Sector Scheme on Cattle Insurance

20. Universal Health Insurance Scheme

21. Rashtriya Swasthya Bima Yojana

22. Coconut Palm Insurance Scheme

23. Pradhan Mantri Suraksha Bima Yojana

24. Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

25. Bangla Shasya Bima MAY 2020

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts by individual donors. Circular No. 116/35/2019 **MAY 2020 AMENDMENTS**

No GST shall be applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.
For Examples:
a.) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.

b.)“Donated by Smt. Malati Devi in the memory of her father” written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

Clarification on issue of GST on airport levies Circular No. 115/34/2019 MAY 2020

It is clarified that airlines need not pay GST on the Airport levies

i. Passenger Service Fee (PSF) and User Development Fee (UDF) are the amounts charges levied by airport operator but collected by the Airlines on behalf of the airport operator

ii. PSF & UDF are consideration for the services provided by Airport operators. Hence, they are liable to pay GST.

- Airlines should:
  - Satisfy the Pure-agent conditions
  - Issue invoice showing the value of PSF&DSF along with the GST component of the same
  - Pay GST on the ticket charges excluding the PSF & DSF
  - Pay GST on the collection charges received from Airport operators

Clarification regarding applicability of GST on Interest, Penalty, Delayed Charges Collected from Customer in case of late payment of Equated Monthly Instalments (EMI) Circular No. 102/21/2019 MAY 2020 AMENDMENTS

where the supplier along with the supply goods and services has allowed a credit facility to the customer in such cases interest for extending loan as well as penal interest charged from the customer upon delay in payment of consideration for supply of goods and services shall be included in the value of supply of goods and services and shall be liable to GST. Further any other charges such as LC usance i.e Deferred Payment Letter of Credit charges, discounting charges and interest on overdue hundies recovered from the customer to extend the credit period beyond the regular credit period generally offered to the Customer, shall also be included in the value of supply and shall be liable to GST..

where the lending facility has been provided by the any finance company or bank where the principle supply is extension of loan in such cases the amount of interest for extending loan as well as penal interest for delay in payment of loan installments shall be included in value of supply. Further such penal interest shall be covered under the definition of interest as provided under notification no. 12/2012 and thus will be exempt from payment of GST.

Note- **notification no. 12/2017** services for providing loan where consideration is represented by of interest or discount is exempted from payment of GST

AMC Mart sells refrigerator to the customer XYZ having price INR 40,000/-. Further AMC Mart provides an option to XYZ to pay the amount for refrigerator under an instalment of INR 10000/- monthly over a period of 5 months. Further if XYZ make default in payment of instalment of loan then in such case an additional amount of penal charges amounting to INR 500/- pm shall also be collected from XYZ. Further AMC Mart will raise a separate invoice for recovery of interest amount as embedded in monthly instalments as well as for the amount of penal interest.	As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between AMC Mart and XYZ is for supply of taxable goods i.e. Refrigerator. Accordingly, the original amount of interest as well as penal interest would be taxable as it would be included in the value of the Refrigerator, irrespective of the manner of invoicing.
If in the above case refrigerator is being sold by AMC Mart and XYZ has the option to avail the loan from AZB financers. XYZ shall repay the amount of loan in 5 monthly instalments of INR 5000 each. Further an additional amount of INR 500 as penal interest will be recovered from XYZ in case there is default in payment of due instalments.	The additional / penal interest is charged for a transaction between XYZ and M/s AZB financers and the same is getting covered under **notification No. 12/2017**. Accordingly, in this case the 'penal interest' charged thereon on a transaction between XYZ and M/s AZB financers would not be subject to GST, as the same would be covered under **notification No. 12/2017** . The value of supply of refrigerator by AMC Mart to XYZ would be INR. 40,000/- for the purpose of levy of GST. It is also important to note that if AZB financers also collects some charges or fee form XYZ then such charges or fee for extending loan or deposit shall not be considered as interest under as defined in **notification No. 12/2017-Central Tax (Rate) dated 28.06.2017**, and accordingly will not be exempt.

Clarification on GST on monthly subscription/contribution charged by a Residential Welfare Association from its members **Circular No. 109/28/2019 MAY 2020 AMENDMENTS**

<table>
<tr><th>Sl. No.</th><th>Issue</th><th colspan="3">Clarification</th></tr>
<tr><td>1.</td><td>Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?</td><td colspan="3">Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.</td></tr>
<tr><td rowspan="6"></td><td rowspan="6">A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?</td><td colspan="3">No. If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member.
RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.</td></tr>
<tr><td>Annual turnover of RWA</td><td>Monthly maintenance charge</td><td>Whether exempt?</td></tr>
<tr><td rowspan="2">More than Rs. 20 lakhs</td><td>More than Rs. 7500/-</td><td>No</td></tr>
<tr><td>Rs. 7500/- or less</td><td>Yes</td></tr>
<tr><td rowspan="2">Rs. 20 lakhs or less</td><td>More than Rs. 7500/-</td><td>Yes</td></tr>
<tr><td>Rs. 7500/- or less</td><td>Yes</td></tr>
<tr><td>3.</td><td>Is the RWA entitled to take input tax credit of GST paid on input and</td><td colspan="3">RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input</td></tr>
</table>

	services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?	services such as repair and maintenance services.
4.	Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?	Rs. 15000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.
5.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 – Rs. 7500] = Rs. 1500/

GST exemption to DG shipping approved maritime courses Circular No. 117/36/2019 MAY 2020 AMENDMENTS

The Maritime Institutes are educational institutions under GST and the courses conducted by them are exempt from GST. The exemption is subjected to meeting the condition specified at

SL. No.66 of the notification No.12/2017 .These clarification applies, mutatis mutandis, to corresponding entries of respective IGST, UTGST, SGST exemption notifications.

Chapter 6 Time of Supply

Taxable goods-When to issue Invoice

Section31. (*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 involvesmovement of goods; or(b) delivery of goods or making available thereof to the recipient, in any other Taxinvoice. 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.

Taxable services –When to issue Invoice

Section 31 (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:
Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—
(a) Any other document issued in relation to the supply shall be deemed to be a tax invoice; or
(b) Tax invoice may not be issued

Time of Supply –Normal Charge

A. Goods

Section 12 (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 isrequired, under sub-section (*1*) of section 31, to issue the invoice with respect to thesupply; or
(b) the date on which the supplier receives the payment with respect to thesupply:
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 bedeemed to have been made to the extent it is covered by the invoice or, as the case maybe, 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.

Service – Section13 (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 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 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.

Time of Supply –Reverse Charge

Goods-

Section 12 (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
(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
(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.

B.Service –Section 13(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
(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.

Section 12(2)/ Section 13(2) TOS For Excess amount upto Rs.1000

Provided that where the supplier of taxable Goods/ 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

Section 12 (4)/Section13 (4) Voucher

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

Section12(5)/ Section 13(5) Residual case
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

Section 12(6)/13(6) Interest late fee or penalty
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

Note: Date of payment received means date of book entry or bank realization –whichever is earlier

Section14 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.

COUNTINOUS SUPPLY OF GOODS OR SERVICES

Continuous supply of goods

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;'

Section 31\(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.

Continuous supply of services

Section 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 conditions, as it may, by notification, specify;

Section 31(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.

Note- Section 31 (1)(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

In case of continuous supply of services, TOS shall be determine as per sec. 13(2)

a) Invoice within time : Invoice or Receipt, whichever earlier	b) Invoice not within time : Completion of service Or Receipt, whichever is earlier in case of continuous supply of services, prescribed time for invoice u/s 31(5)

Prescribed time for invoice u/s 31(5)

Due date as ascertainable – Due date	Due date not ascertainable – Date of payment	Contract Linked to event – Date of completion of Event (criteria of 30 days/ 45 days not applicable here)

Note- date of completion in case of continuous supply of services is Date of Due date or Date of Completion of event

Goods sent on Return Basis

Section 31 (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.

Note- TOS in above case will be Date of invoice or Last date of Invoice, Whichever is earlier.

Last date of Invoice here means

If supply confirmed by Receipt within 6 months- Date of Such Confirmation/Approval	If supply is not confirmed by Recipient –Date when 6 months get over

NN 66/2017- TOS is only on Invoice basis, not receipt basis and accordingly furnish the details (Except Composition dealer)and returns as mentioned in Chapter IX of the said Act and the rules made there under.

NN4/2018 Construction Service -TOS
Time when the possession or right in the property is transferred to the land owner by entering into a conveyance deed o r similar instrument (eg. allotment letter). In case of

A) Registered persons who supply 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; and

B) Registered persons who supply 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.

Ch 7 Valuation under GST

Section 15 Value of taxable supply

<u>Value is transaction value</u>

(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.

<u>Value shall include</u>

(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;
Example

- Packing, labeling, designing etc
- Excise Duty, Customs duty or other taxes except GST
- Royalty, warranty charges, etc.
- Insurance charges if goods are insured by the seller
- Dharmada collected by the dealer
- Weightment charges
- All expenses before the delivery (loading, weighing, coolie)
- Freight shows separately in invoice
- Salesman commission
- Rental charges for durable and returnable packing
- Erection installation charges
- Pre-delivery inspection charges

(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
Note-
Subsidy Given by Govt then Not to be added to the value of supply But Given by others and Subsidy linked to the price of supply then it would be added to value of supply. If Not linked to the price then it will not be added to the value of supply.

Clarification regarding applicability of GST on Interest, Penalty, Delayed Charges Collected from Customer in case of late payment of Equated Monthly Instalments (EMI) Circular No. 102/21/2019 MAY 2020 AMENDMENTS

where the supplier along with the supply goods and services has allowed a credit facility to the customer in such cases interest for extending loan as well as penal interest charged from the customer upon delay in payment of consideration for supply of goods and services shall be included in the value of supply of goods and services and shall be liable to GST. Further any other charges such as LC usance i.e Deferred Payment Letter of Credit charges, discounting charges and interest on overdue hundies recovered from the customer to extend the credit period beyond the regular credit period generally offered to the Customer, shall also be included in the value of supply and shall be liable to GST..

where the lending facility has been provided by the any finance company or bank where the principle supply is extension of loan in such cases the amount of interest for extending loan as well as penal interest for delay in payment of loan installments shall be included in value of supply. Further such penal interest shall be covered under the definition of interest as provided under notification no. 12/2012 and thus will be exempt from payment of GST.

Note- **notification no. 12/2017** services for providing loan where consideration is represented by of interest or discount is exempted from payment of GST

AMC Mart sells refrigerator to the customer XYZ having price INR 40,000/-. Further AMC Mart provides an option to XYZ to pay the amount for refrigerator under an instalment of INR 10000/- monthly over a period of 5 months. Further if XYZ make default in payment of instalment of loan then in such	As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between AMC Mart and XYZ is for supply of taxable goods i.e. Refrigerator. Accordingly, the original amount of interest as well as penal

case an additional amount of penal charges amounting to INR 500/- pm shall also be collected from XYZ. Further AMC Mart will raise a separate invoice for recovery of interest amount as embedded in monthly instalments as well as for the amount of penal interest.	interest would be taxable as it would be included in the value of the Refrigerator, irrespective of the manner of invoicing.
If in the above case refrigerator is being sold by AMC Mart and XYZ has the option to avail the loan from AZB financers. XYZ shall repay the amount of loan in 5 monthly instalments of INR 5000 each. Further an additional amount of INR 500 as penal interest will be recovered from XYZ in case there is default in payment of due instalments.	The additional / penal interest is charged for a transaction between XYZ and M/s AZB financers and the same is getting covered under **notification No. 12/2017**. Accordingly, in this case the 'penal interest' charged thereon on a transaction between XYZ and M/s AZB financers would not be subject to GST, as the same would be covered under **notification No. 12/2017** . The value of supply of refrigerator by AMC Mart to XYZ would be INR. 40,000/- for the purpose of levy of GST. It is also important to note that if AZB financers also collects some charges or fee form XYZ then such charges or fee for extending loan or deposit shall not be considered as interest under as defined in **notification No. 12/2017-Central Tax (Rate) dated 28.06.2017**, and accordingly will not be exempt.

<u>Discount excludes from Value</u>

(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.

Valuation Rules

- 1. Rule 27- Value of supply of goods or services where the consideration is not wholly in money
- 2. Rule 28: Value of supply of goods or services or both between distinct or related persons, other than through an agent
- 3. Rule 29: Value of supply of goods made or received through an agent
- 4. Rule 30: Value of supply of goods or services or both based on cost
- 5. Rule 31: Residual method for determination of value of supply of goods or services or both:
- 6. Rule 31A: Value of supply in case of lottery, betting, gambling and horse racing.
- 7. Rule 32: Determination of value in respect of certain supplies
- 8. Rule 33: Value of supply of services in case of pure agent
- 9. Rule 34: Rate of exchange of currency, other than Indian rupees, for determination of value
- 10. Rule 35: Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

2T**CGST Rule 27: Value of Supply of Goods or Services where the Consideration is not wholly in Money (Chapter-IV: Determination of Value of Supply)**

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.

Example 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.

Example 2 -Where a laptop is supplied for forty thousand rupees along with the barter of a 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 the laptop is forty four thousand rupees.

2T**CGST Rule 28: Value of supply of Goods or Services or both between Distinct or Related Persons, other than through an Agent (Chapter-IV: Determination of Value of Supply)**

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.

Example- Let's say that TATA Steel supplies goods worth Rs. 2,50,000 (which is the OMV of the goods) to TATA Motors for Rs. 2,00,000; and TATA Motors claims the full amount of GST charged in the invoice which is Rs. 36,000 (@18% of Rs. 2,00,000) as input tax credit, then this invoice value will hold true for valuation purpose. Eventually, when TATA Motors sell their products to their end consumers they will only get input credit of what was paid earlier as tax i.e. Rs. 36,000 (and not the tax that should have been paid if the goods were sold at OMV). Therefore 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 goods or services.

2T**CGST Rule 29: Value of Supply of Goods made or received through an Agent (Chapter-IV: Determination of Value of Supply)**

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 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, where the goods are intended for further supply by the said recipient.

Example- 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.

2T**CGST Rule 30: Value of Supply of Goods or Services or both based on Cost (Chapter-IV: Determination of Value of Supply)**

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 110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Example- Suppose Peacock Limited is manufacturing office chairs and the cost of manufacturing is Rs. 4,000 per chair. Similar chair in open market is valued at Rs. 4,500. These chairs are supplied to a furniture showroom at the rate Rs. 3,000 and balance in non-monetary consideration. Now since the open market value is available, Rs. 4,500 will be considered for valuation of supply. However in case if Open Market Value is not available, the value of supply as per cost method will be followed which as per the rule will be 110% of the cost of manufacturing i.e. Rs. 4,000*110% = Rs. 4,400.

2T**CGST**2T **Rule 31: Residual method or Best Judgment 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 general provisions of section 15 and these rules: Provided that in case of supply of services, the supplier may opt for this rule, disregarding rule 30.

In spite of these rules, if a registered person supplying goods or services under GST is still not able to determine the value, he may choose to follow the Residual Method of Valuation.

As per the residual method, where the value of supply of goods or services or both cannot be determined under the cost method (i.e. Rule 30), the same shall be determined using reasonable means consistent with the principles and general provisions of the GST.

Value of service can be on the basis of rule 31 instead of on cost plus 10% basis as per rule 30. Therefore for the supply of service the supplier may opt for this rule, disregarding rule 30 (Proviso to Rule 31)

A simple interpretation of this rule suggests that supplier can use any method to determine the value of supply under GST, provided such method is justifiable in the case of inquiry. The registered taxable person should not exploit this method to displace the GST liability as the penal provisions are strict under the new indirect tax regime.

Example2T 2Twhen cost of production is not being able to determine then number of man hours required to complete a job can be taken as a basis under the residual method for the valuation of supply of goods or services.

Section 15 (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.

2T**CGST Rule 31A: Value of supply in case of lottery, betting, gambling and horse racing (Chapter-IV: Determination of Value of Supply)**

As per the newly inserted rule, the value in respect of supplies specified below shall be determined in the manner provided hereinafter: [Para inserted vide **Notification No 3/2018 dated 23.01.2018**]

(a) 2T**The value of supply of lottery run by State Governments**2T shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.

(b) 2T**The value of supply of lottery authorised by State Governments**2T 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.

2T**Note: Lottery run by SG:**2T A lottery not allowed to be sold in any state other than the originating state.

2T**Lottery authorised by SG:**2T A lottery which is authorised to be sold in states other than the originating state also.

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.

2T**CGST Rule 32: Determination of Value in respect of Certain Supplies (Chapter-IV: Determination of Value of Supply)**

2T**Rule32**2T (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.

2T**Rule32**2T (2) The value of supply of services in relation to purchase or sale of foreign currency, including money changing, shall be determined by the supplier of service in the following manner:-

Option 1

UForeign currency to Indian currency

(a) 2T In case 2Twhere the RBI reference rate for a currency is available

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, for that currency at that time, multiplied by the total units of currency.

2T-Formula for value of supply:

2T **{(Buying or selling Rate – (RRR)} x No of Units of currency**

2TExample- Sold 10000 units of USD, Conversion rate USD 1=INR 60 ,RBI Reference rate i.e. RRR: USD 1=INR 592T**.** Then**,**2TValue of Supply : INR (60-59)x10000=INR 10000

UForeign currency to Indian currency

2T(**b**) In case 2Twhere the RBI reference rate for a currency is not available

The value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money:

- 2TFormula for value of supply: **1% x Gross amount of INR**

2TExample -Purchased 5000 units of KRW @ KRW1=INR 0.60 i.e 2T**South** 0T**Korean currency**

2TRBI Reference rate i.e. RRR: Not available

2TValue of Supply : {1%x(.60×5000)}=INR 30

UForeign currency to Foreign currency i.e Indian currency not involved

where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% 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 RBI.

2T**Formula for value of supply**

2TA or B Whichever is lower INR x1%

UA U2TForex Sold x RRR = INR	UB U2TForex Purchased x RRR = INR

2TExample- Exchanged 10000 JPY for 80 EUR

2TRRR: JPY1= INR= 0.50, EUR1=INR80

2TValue of Supply: INR (10000x.50=INR 5000

2TLower of the two =INR 5000×1%=INR 50

2TINR (10000x.50)=INR 5000	2T INR (80×80)= INR 6400

2T**Provided**2T also that a person supplying the services may exercise option to ascertain 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.

Option 2

At the option of supplier of services, the value in relation to supply of foreign currency, including money changing, shall be deemed to be

Gross Amount of INR	**Value of supply**
Up to Rs 100000	Higher of [Rs. 250 or 1% of Gross Amount]
Rs 100000 – Rs 1000000	Rs 1000 + 0.5% of Gross amount
Above Rs 1000000	Lower of [(Rs 5500 + 0.1% of gross amount) or Rs 60000]

Example

M/S XYZ, Forex Dealer entered into the following transaction in a particular tax period.

Calculate the value of supply for him.

10 Conversions of USD to Eur = Rs. 20 Lacs per transaction

20 Conversions of JPY to USD = Rs. 5 Lacs per transaction

05 Conversions of INR to USD = Rs. 20,000 per transaction

2T**Value of supply will be calculated as below**2T :

(5500+ 0.1% x Rs.20,00,000)x10 =Rs 75,000

(1000+ 0.5% x Rs.5,00,000)x20 =Rs 70,000

(250×5) =Rs 1250 (Here Rs 250 minimum will be charged ,as 1% of Rs 20000 is Rs 200 only)

2T**Rule 32(3) Value of service of booking of air travel ticket**

The value of 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:

5% of the basic fare in the case of domestic bookings, and

10% of the basic fare in the case of international bookings

2T**Explanation-**2T For the purposes of this sub-rule, the expression 2T**"basic fare"**2T means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

2T**Rule 32(4) The value of supply of services in relation to life insurance business**

U<u>Investment, or savings Policy</u>

a) If Investment or savings Policy Amount is intimated to the policy holder at the time of supply of service, then Value will be gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder.

b) If Investment or savings Policy Amount is not intimated to the policy holder at the time of supply of service, then Value will be

From 1PstP Year -25% of the premium charged from the policy holder

From 2PndP and subsequent year – 12.5 % of the premium charged from policy holder

U<u>Single premium annuity policies</u>

Value shall be 10%. of single premium charged from the policy holder;

2TU<u>If policy is towards risk cover only</u>

2TValue shall be determined by Section 15 (1) 2T.Therefore entire premium will be subject to GST.

2T**Rule 32(5) Valuations in respect of buying and selling of second hand goods**

U<u>If ITC is not taken on purchase of such goods</u>U then,

Value = selling price –purchase price

Note-In case of respond goods from defaulting borrowers ,Purchase price = purchase price of defaulting borrower – 5% of each quarter or part there of between date of purchase of defaulting borrower & date of disposal by person.

2TExample-: Mr X (an unregistered person) taken a loan of Rs 500000 from MR Y for purchase of a car of Rs 500000. Mr X has defaulted the loan and for which Mr Y took back the possession of the car. Mr Y sold this car for Rs 40000 after 10 months after taking back from Mr X . Value of supply will be computed as under :

2TOriginal price of the car =Rs 5,00,000

2TLess : 40% (i.e. 5% per qtr for 1 year and 10 months=Rs 2,00,000

2TPurchase price of car for Mr.Y=Rs 3,00,000

2TValue of Supply by Mr Y (Sale price- purchase price)=Rs 1,00,000

UIf ITC is taken on purchase of such goodsU
Value=Transaction value u/s 15(1) or outward supply of such goods

2T**Rule 32(6) The value of a token, or a voucher, or a coupon, or a stamp**2T **(other than postage stamp)**
The value of voucher etc. 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.

2T**Rule 32(7) The value of taxable services to distinct person**2T
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 between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

2T**CGST Rule 33: Value of supply of services in case of pure agent**

If the expenditure or costs has been incurred by a supplier as a pure agent of the recipient of supply then the same shall be excluded from the value of supply, if all the following conditions are satisfied, namely:-

1. The supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;

2. 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

3. 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.

2T**Explanation-**2T For the purposes of this rule, 2T**"pure agent"**2T 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.

Example-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 Registrar of the Companies. The fees charged by the Registrar of the companies 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. Therefore no GST will be applicable on these two charges incurred as pure agent.

2T**Example of pure agent**

Suppose a Customs Broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. The amounts charged by the Customs Broker are as below:

S.No.	Component charged in invoice	Amount
1	Agency Income	Rs. 10000/-
2	Traveling expenses ; Hotel expenses	Rs. 15,000/-
3	Customs Duty	Rs. 55,000/-
4	Docks Dues	Rs. 5000/-

In the above situation, agency income and travelling/hotel expenses shall be added for determining the value of supply by the Customs Broker whereas Docks dues and the Customs Duty shall not be added to the value, provided the conditions of pure agent are satisfied.

Example-X contracts with Y a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges fro Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays Y. Y doesn't act an agent behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X.

Advertising service is an input service for the estate agent in order to enable or facilities him to perform his services as an estate agent.

CGST Rule 34: Rate of Exchange of Currency, other than Indian Rupees, for Determination of Value (Chapter-IV: Determination of Value of Supply)

(1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board (CBIC) under section 14 of the Customs 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.

CGST Rule 35: Value of Supply inclusive of Integrated Tax, Central Tax, State Tax, Union Territory Tax (Chapter-IV: Determination of Value of Supply)

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 %)
ExampleQuestion: M/s XYZ Ltd purchased goods worth Rs 220000 inclusive of GST of 18% of which CGST is 9%and SGST is 9%. What will be the amount of tax included in the value of supply?

Ans: The tax amount paid by XYZ Ltd shall be computed as per provision of rule 35 i.e. Tax Amount =220000*18/118 i.e Rs 33560 of which amount CGSt will be Rs 16780 & SGST will be Rs 16780

Circular/Notification- Whether value of moulds, dies, jigs, 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?

In this regard, Sec 15 of the CGST Act lays down the principal for determining the value of supply under GST. By referring this section, it has been clarified that the value of above moulds, dies etc 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

CBIC Clarification Original Equipment Manufacturers (OEM)
Q Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?
A- Value of Supply - the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the CGST Act.

Q If there is a contract between OEM and component manufacturer 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 FOC basis?

A- Value of Supply: - the amortized cost of such moulds/dies shall be added to the value of the components and Input Tax Credit shall be the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

Clarification on issue of GST on Airport levies Circular No. 115/34/2019 MAY 2020 AMENDMENTS

The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines.

Airline can act as pure agent (provided all conditions are satisfied under rule 33) on the airport services like Passenger Service Fee (PSF) and User Development Fees (UDF) provided by Airport Operators to the passengers.

The airline (pure agent) shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover from the passengers the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator

Airlines shall be liable to pay GST on the collection charges under forward charge. ITC of the same will be available with the airport operator.

Chapter 8 Input Tax Credit

Definition of Input, Input Service, Capital Goods and other aspects related to ITC

Section2 (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;

Section2 (60) "Input service" means any service used or intended to be used by a supplier in the course or furtherance of business;

Section2(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.

Section2(46) "electronic credit ledger" means the electronic credit ledger referred to in sub-section (*2*) of section 49;

Section2 (43) "electronic cash ledger" means the electronic cash ledger referred to in subsection
(1) of section 49;

Section 2(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;

Section2 (83) "Outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business

Section 2(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

Zero rated supply-CHAPTER VII of IGST Act

Section 16. (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 to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund 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 procedure 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 there under.

Eligibility and conditions for taking input tax credit.

Section 16. (*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.

Section 16 (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;

(b) he has received the goods or services or both

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

(i) *person."* **where the services are provided by the supplier to any person on the direction of and on account of such registered person.;**

Why this Amendments-BILL-TO-SHIP-TO model approved for supply of services also

(c) subject to the provisions of section 41*or section 43A*, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation ofinput 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 installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of 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 added to his output tax liability, along with interest thereon, 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 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 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 invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

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.". {inserted via: Removal of difficulty Order No. 02/2018-Central Tax}

Rule 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 subsection (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section34;

(d) a bill of entry or any similar document prescribed under the Customs Act,1962 or rules made there under 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, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person:

[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 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.

CBIC Clarification with respect to New sub-rule (4) inserted in rule 36 of the CGST Rules Notification No. 49/2019 MAY 2020 AMENDMENS

As per Rule 36 (4) claimed ITC in GSTR-3B should not exceed by 20 % of ITC reflecting in GSTR 2A for the month. For e.g If claimed ITC in GSTR 3B is Rs.100 but GSTR 2A Reflects only Rs.50 as detail of details of invoices or debit notes have not been uploaded by the suppliers. Then in such case Maximum ITC allowed for month shall be Rs.50 x 120%= Rs.60. Clarification by Circular is as follows -

Claim on Self-Assessment Basis	This being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the taxpayers.
Full ITC which are Out of subsection (1) of section 37	Taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availing of ITC are met in respect of the same
Effective from 9th OCT 2019	The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019, not for already issued Invoice/ debit note on such date.
No supplier wise restriction	The restriction imposed is not supplier wise. The credit available under sub-rule (4) of rule 36 is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers.
calculation will not be based on Ineligible ITC only	The calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 % of the eligible credit available. Further The restriction of 20% applies with respect to eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under subsection (1) of section 37 as on the due date of filing of the returns in FORM GSTR 1 of the suppliers for the said tax period.

Section 17 Apportionment of credit and blocked credits.

(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 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, except those specified in paragraph 5 of the said Schedule.**

Note- As per clause (b) of Para 5 of SCH-II sale of building shall not be treated as supply 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. SINCE THERE IS NO SUPPLY SO NO ITC IS AVAILABLE.

Special option of ITC to banking and F.I.

(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 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.

Blocked Credit in Certain Case

(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) 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

Note-No ITC on Inward Supply of Motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) **Except** Such motor vehicles when used for-

a. making further taxable supply of such motor vehicles;

b. making taxable supply of transportation of passengers;

c.making taxable supply of 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; o

(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

Note-No ITC on Inward Supply of Vessels and aircrafts Except such Vessels and aircraft when used for-
a) Making further taxable supply of such vessels or aircraft;
b) Making taxable supply of transportation of passengers;
c) Making taxable supply of imparting training on navigating such vessels;
d) Making taxable supply of imparting training on flying such aircrafts;
e) 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):

a) When such goods and/or services are provided by an employer to its employees under a statutory obligation

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

(c) goods or services or both received by a taxable person for construction of an immovable property (other than plant or 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 purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

(d) goods or services or both on which tax has been paid under section 10;

(e) goods or services or both received by a non-resident taxable person except on goods imported by him;

(f) goods or services or both used for personal consumption;

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

(h) any tax paid in accordance with the provisions of sections

74, 129 and 130 Note-
Section 74 of CGST Act 2017: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts

Sec 129 of CGST Act, 2017 Detention, seizure and release of goods and

conveyances in transit Sec 130 Confiscation of goods or conveyances and levy

of penalty, CGST Act, 2017

(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

Rule42 of CGST Rule 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';	(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

(d) input tax credit left after attribution of input tax credit under clause [(f)] shall be called common credit, be denoted as 'C_2' and calculated as-

$C_2 = C_1- T_4$

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 T4 shall be zero during the construction phase because inputs and input services 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.

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 CED and entry 92A Central Tax of List I of the Seventh Schedule to the Constitution and entry 51 State ED and 54 VAT of List II of the said Schedule 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'.

(g) 'T_1', 'T_2', 'T_3' and 'T_4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 [and at summary level in FORM GSTR-3B

$C_2 = C_1 - T_4$

Ineligible Credit

Eligible Credit

D_1 D_2

(m) the amount equal to aggregate of 'D_1' and 'D_2' shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03

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,- $C_3 = C_2 - (D_1+D_2)$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D_1' and calculated as-

$D_1 = (E \div F) \times C_2$

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

Provided that in case of supply of services covered by clause (b) of para 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 afterissue 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;

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.

(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 5% of C_2.

(l) the amount 'C3', 'D1' and 'D2' 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 or through FORM GST DRC-03

Rule 42 (2) [Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit][44] 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

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 [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03][45] 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) Deleted

(c) 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.

Rule43. 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 FORM GSTR-2 [and FORM GSTR-3B][47] 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 zerorated supplies shall be indicated in FORM GSTR-2 [and FORM GSTR-3B][48] and shall be credited to the electronic credit ledger	(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as ‘**A**’, shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods

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.

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of 5% points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

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.

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'T_c.

A

(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-
$T_m = T_c \div 60$

(f) 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-
$T_e = (E \div F) \times T_r$
where,
'E' is the aggregate value of exempt supplies, made, during the tax period, and
'F' is the total turnover [**in the State**] of the registered person during the tax period:

Provided further][52] 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 themonth during which the said value of 'E/F' is to be calculated

Provided Exempt supplies include reverse charge supplies, transaction in securities, sale of land and Building when entire consideration is received after completion certificate

Provided that in case of supply of services covered by clause (b) of para 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.- 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 ED [and entry 92A Central Sale Tax of List I of theVIIth Schedule to the Constitution and entry 51State ED and 54 VATof List II of the said Schedule;

Explanation 1: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall also exclude

(i) the value of services by way of accepting deposits, extending loans or advances in sofar 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 financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(ii) 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.

(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) The amount Te 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.

Section 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 this 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 i.e 5% per quarter or part thereof

Note- becomes liable to pay tax under section 9:

In case of Composition of normal: on the date immediately pending the date from which person become liable to pay tax under normal scheme and In case of Exempt to taxable: on the date immediately preceding the date from which such supply become taxable

(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 i.e 5% per quarter or part thereof

(2) A registered person shall not be entitled to take input tax credit under subsection (*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

Rule 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 subsection (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) the registered person shall within a period of 30 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.][33]

(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

(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.

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(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.

Transfer of Unutilized ITC

(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 provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Note- **Clarification in respect of transfer of ITC in case of death of sole proprietor**

Transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole propriety For the purpose of section 18(3) of the CGST Act and rule 41(1) of the CGST Rules.

Rule 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. [*Explanation*:- For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.]

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Rule 41A. Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.-

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 unutilized 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.

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.]`

Reversal of Credit in Special Case

Section 18 (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 of 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 subsection (*4*) shall be calculated in such manner as may be prescribed

Rule 44 Manner of reversal of credit under special circumstance

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 subsection (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 thecorresponding 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.

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) 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 insub-section (4) of section 18 or, as the case may be, sub-section (5) of section29.

(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 section18 and in FORM GSTR-10, where such amount relates to the cancellation ofregistration.

(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 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.

Reversal of credit on supply of capital goods/plant & machinery on which ITC has been taken

Section18(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.

Note- If capital or plant & machinery on which ITC has been taken are supplied [Removed as such by way of sale transfer barter etc.]

a. Payment =ITC -5% per at or part thereof or
b. GST on transaction value

In case of refectories bricks, module & die, jugs & fixture supplied as a scraps then person may pay tax on transaction value only.

Section 19 Taking input tax credit in respect of inputs and capital goods sent for job work.

Section 2(68) “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;

Section 2(88) “principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

(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 (Up to 1 Year Commissioner can extend) 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 (Up to 2 Year Commissioner can extend)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.

Rule 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, [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 [or sent from one job worker to another-Deleted] during a quarter shall be included in

FORM GST ITC-04furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter[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.]

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143,it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

Explanation.- For the purposes of this Chapter,-
(1) the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;

(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-
(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
(b)the value of security shall be taken as one per cent. of the sale value of such security.

Section 20 Manner of distribution of credit by Input Service Distributor

Section 2 (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;

(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 tax, 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 the 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 a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients 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 "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the 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 under entry 84 *and 92A* of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule. It means-Apart from excise duty, State excise duty and VAT, the value of turnover would now exclude central sales tax also.

Rule88A. 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 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 utilized 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

Rule 37. Reversal of input tax credit in the case of non-payment of consideration.

(1)A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month 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) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under subsection(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.

Clarification regarding recovery of excess credit by an Input Service Distributor

Issue:- the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in
contravention of the provisions contained in section 20 of the CGST Act.

Clarification:-

1. According to Section 21 of the CGST Act where the ISD distributes the credit in contravention of the provisions contained in section 20 of the CGST Act 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 penalty if any.

2. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using FORM GST DRC-03.

3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. FORM GST DRC-07 can be used by the tax authorities in such cases.

4. It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 12(1)(ix) of the CGST Act.

Ch 9 Place of Supply under GST

Section 2(*5*) of IGST Act "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Section 2(6) of IGST Act: Definition of "Export of Services"
"export of services" means the supply of any service when,-
(i) the supplier of service is located in India;

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

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

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

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

Export of Goods Vs Export of Service

	Export of Service	Export of Goods
	Location of supplier is in India	No such conditions
	Location of recipient as outside India	No such conditions
	Amount received in convertible foreign exchange or Indian rupees wherever permitted by the Reserve Bank of India	No any specific condition for receipt of amount in convertible foreign exchange or Indian rupees wherever permitted by the Reserve Bank of India
	the place of supply of service is outside India	Goods taking goods out of India
	supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.	Supply is treated as export supply even though goods are supplied to another establishment of a same person.

2T**Section 2(10) of IGST Act: Definition of 'Import of Goods'**

"Import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

2TSection 2(11) of IGST Act: Definition of 'Import of Services'

"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.

2T**Section 2(14) of IGST Act: Definition of "Location of the Recipient of Services**

(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.

2T**Section 2(15) of IGST Act: Meaning of "Location of the Supplier of Services"**

(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.

Section7 of IGST Act Inter-State supply.
Supply of Goods
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.

Import of Goods

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.

Note- Levy of GST on Imported Goods as per proviso to sec 5 (1) of IGST Act
Levy Shall be levied and collected in accordance with the provision of section 3 of the Customs Tariff Act,1975(i.e.ACD3(7)&ACD3(9) On the value as determined under the Customs Act, 1962(i.e. as per sec 14) and collection shall be At the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.(i.e.as per Sec 15 of Customs Act,1962)
Supply of Service
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.

Import of Service

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.

Supply Outside India

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.

Section8 of IGST Act Intra-State supply

1Subject 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 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.

2T**Section 9 of IGST Act 2017: 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.

2T**Section 10 of IGST Act 2017: Place of Supply of Goods other than EXIM Goods**

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 time of the delivery to the recipient;

(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.

2T**Section 11 of IGST Act 2017: 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.

2T**Section 12 of IGST Act 2017: 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 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),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.

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.

Note-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:

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.

In order to reduce export cost in case of goods, the proviso provides that no GST shall be Chargeable on transportation of goods from a place in India to a place outside India

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

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

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

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 prepayment 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.

Section 13 of IGST Act 2017: 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:

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;

Note-Nothing contained in Section 13(3)(a) of IGST Act 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 **other** use in India, other than that which is required for such repairs ortreatment or process.

No GST shall be chargeable in case, good s are imported in India for treatment or any process and then exported back out of India

(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 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, shall be the place where the event is actually held.

(6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of services, namely:–

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(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.

Note- **Section 2(13) of IGST Act: Definition of “Intermediary”**

“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.

(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.

Section 2(3) of IGST Act: Definition of “Continuous Journey

“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: 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.

(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.

Explanations: 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.

Section 14 of IGST Act 2017: Special provision for payment of tax by a supplier of online information and database access or retrieval (OIDAR) services

Section 2(17) of IGST Act: Definition of "Online Information and Database Access or Retrieval Services"

"online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

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

(vi) digital data storage; and

(vii) online gaming

Section13 (12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanations: 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.

Section14 (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 nontaxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:–

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
(c) the intermediary involved in the supply does not authorise delivery; and

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

(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.

Examples of OIDAR Services:

1. Website hosting, webpage hosting, automated online distance maintenance of programmes and equipment.

2. Supply of software, accessing or downloading software and updating thereof.

3. Supply of images, accessing or downloading text and information, making available of databases.

4. Supply of music, films, games, accessing or downloading of music on to computers, mobile phones and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events.

5. Supply of distance teaching dependent on the Internet or similar electronic network is used as a tool simply for communication between the teacher and student. Work-books completed by pupils online and marked automatically, without human intervention.

Exemption

Service received from service provider located in Non-taxable territory	
SP	SR
Received from a	By

provider of service located in a non-taxable territory	a) Central Govt., State Govt., UT a Local authority, a government authority or an individual in relation to any purpose other than commerce, industry or any other business or profession ; b) An entity registered under section 12AA of the Income tax Act, 1961 for the purposes of providing charitable activities or c) A person located in a Non-taxable territory

Provided that the exemption shall not apply to-

i. Online information and database access or retrieval services received by persons specified in entry (a) or entry (b) or
ii. Services by way of transportation of good by a vessel from a place outside India up to the customs stations of clearance in India

OIDAR Registration under GST

In case where OIDAR service provider and receiver are located in India then, general registration rules shall apply. However, where the service provider is located in a non-taxable territory and is received by non-taxable online recipient then the service provider is required to take registration under simplified registration scheme.

Simplified OIDAR Registration Scheme:

• Section 14(2) provides that the supplier of OIDAR services shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government. The Government is to give notification in this regard.

• 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.

• 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.

• Notification no.2/2017 – Integrated tax, dated 19th June 2017 has notified Principal commissioner of central tax, Bengaluru (west) to grant registration in such cases.

• Any OIDAR service provider supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient is required to obtain GST registration by filing GST REG-10.

Pyment

Rule 87 (2)Provided further that the person supplying OIDAR services from a place outside India to a non-taxable online recipient referred in Section 14 of IGST Act 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. **Deletion of 2nd proviso to rule 87(2): Generation of challan in Form GST PMT-06 by a person providing OIDAR service** from a place outside India to a non-taxable online recipient through the Board's payment system EASIEST was to be notified vide this proviso, now deleted.

Rule 3 of the IGST Rules Advertisements over the internet, service is deemed to be provided all over India

The said provision in rule 3 has been amended to provide that in case of advertisements over internet, the advertisement service **shall be deemed to have been provided all over India**. Thus, the value of such service will be apportioned amongst all States and UTs, of India in the manner prescribed therein i.e internet subscribers in such State/UT.

Rule No	Type of Service	Basis
4.	The supply 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, referred under section 12(3) of the IGST Act, 2017	in proportion to the number of nights stayed in such property
4.	All other services in relation to immovable property including 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 (except services provided by way of lodging accommodation by a house boat or any other vessel), and services ancillary to such services, referred under section 12(3) of the IGST Act, 2017.	in proportion to the area of the immovable property lying in each State or Union territory.
	The Supply of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, referred under section 12(3) of the IGST Act, 2017.	in proportion to the time spent by the boat or vessel in each such State or Union territory,
5.	The supply of services 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 services ancillary to organisation of any of the events or services referred earlier or assigning of sponsorship to such events etc. referred under sub section (7) of section 12 of the IGST Act, 2017	by application of the generally accepted accounting principles.
6.	The 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 referred under sub section (11) of section 12 of the IGST Act, 2017	in proportion to the number of points lying in the State or Union territory The number of points in a circuit shall be determined in the following manner. a) 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; b) 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.
7.	Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of the supply of services in respect of goods which are required to be made physically available, services supplied to an individual which require the physical presence, etc. covered by sub section (3) of section 13 of the IGST Act, 2017	a) 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; b) 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; c) in the case of services supplied to individuals, by applying the generally accepted accounting principles.
8.	Where the location of the supplier of services or the location of the recipient of services is outside India, the supply of services directly in relation to an immovable property, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property etc. referred under section 13(4) of the IGST Act, 2017	by applying the provisions of rule 4, mutatis mutandis
9.	Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of the 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 etc. referred under section 13 of the IGST Act, 2017	by applying the provisions of rule 5, mutatis mutandis

CBIC notifies place of supply of R&D services related to pharmaceutical sector

Notification No. 04/2019 MAY 2020 AMENDMENTS

In exercise of the powers conferred by sub-section (13) of section 13 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, on the recommendations of the Council, hereby notifies following description of services or circumstances as specified in Column (2) of the Table A, in which the place of supply shall be the place of effective use and enjoyment of a service as specified in the corresponding entry in Column (3), namely:-

Table A

Sl. No.	Description of services or circumstances	Place of Supply
(1)	(2)	(3)
1.	Supply of research and development services related to pharmaceutical sector as specified in Column (2) and (3) from Sl. No. 1 to 10 in the Table B 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 fulfillment of the following conditions:- (*i*)Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory. (*ii*)Such supply of services fulfills all other conditions in the definition of export of services, except sub- clause (iii) provided at clause (6) of Section 2 of Integrated Goods and Services Tax Act, 2017 (13 of 2017).

Table B

Sl. No.	Nature of Supply	General Description of Supply
(1)	(2)	(3)
1.	Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.
2.	Integrated development	
3.	Evaluation of the efficacy of new chemical/biological	This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and

	entities in animal models of disease	administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.
4.	Evaluation of biological activity of novel chemical/biological entities in in-vitro assays	This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions.
5.	Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.
6.	Safety Assessment/Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.
7.	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.
8.	Bio-equivalence and Bio-availability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bio-availability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.
9.	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of

		safe dosage.
10.	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.

Clarification on Benefit of Zero rated Supply

Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?
Clarification:
A) As per section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed.
Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:

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

(b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

B) A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

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

Services of short-term accommodation, conferencing, banqueting etc to SEZ

Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an interState supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?

Clarification:
A) As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.
Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply

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

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

D) It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Clarification regarding Place of Supply in certain cases Circular No. 103/22/2019 MAY 2020 AMENDMENTS

Issue	Clarification
Services Provided by Ports – Various services are being provided by the port authorities to its clients in relation to cargo handling. E.g. services in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel, etc	Such services are ancillary to or related to cargo handling services. They are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.
Services rendered on goods temporarily imported in India -Place of supply in case of supply of various services on unpolished diamonds such as cutting	In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the

and polishing activity which have been temporarily imported into India and are not put to any use in India	provisions contained in sub-section (2) of Section 13 of the IGST Act

Place of supply of software/design services related to ESDM industry Circular No. 118/37/2019 MAY 2020 AMENDMENTS

Software/design services by supplier located in taxable territory to service recipient located in nontaxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply. Place of supply is the location of the service recipient as per Section 13(2) of the IGST Act.

Ch 10 Registration under GST

Some Important Definitions –CGST Act

Section2 (107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24.

Section2 (106) "tax period" means the period for which the return is required to be furnished

Section2 (109) "taxable territory" means the territory to which the provisions of this Act apply;

Section2 (26) "common portal" means the common goods and services tax electronic portal referred to in section 146

Note- Section 146 The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

Section2 (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.

Section2 (10) "appointed day" means the date on which the provisions of this Act shall come into force

Section2 (50) "fixed establishment" means a place (other than the registered place of business) which is characterized 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;

Section2 (89) "principal place of business" means the place of business specified as theprincipal place of business in the certificate of registration

Section2 (94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number

Section 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.

"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.";

Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from Rs.20 lacs to such amount not exceeding Rs.40lacs 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.

New threshold limit for registration

I. Manipur, Mizoram , Nagaland , Tripura are States with threshold limit of ` 10 lakh for both goods and services

II. Arunachal Pradesh ,Meghalaya ,Sikkim ,Uttarakhand, Pundicherry,Telangana are States with threshold limit of Rs.20 lakh for both goods and services

III. For All other States of India including Jammu and Kashmir ,Assam ,Himachal Pradesh with threshold limit of ` 20 lakh for services and ` 40 lakh for goods

(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 except The state of Jammu Kashmir and states of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

Sec 23 Persons not liable for registration.

(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) 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.

Note- Sec 2(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

Sec 24 Compulsory registration in certain cases
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 *who is required to collect tax at source under section 52;*
Note- Not all but those e-commerce operators who are required to collect tax at source under section 52 of the CGST Act would only be required to obtain compulsory registration
(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; and
(xii) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Registration under Goods and Service Tax (GST) regime will confer following advantages to the business:

(i)Legally recognized as supplier of goods or services.

(ii) Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.

(iii) Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients

(iv)Getting eligible to avail various other benefits and privileges under GST

Section 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.
"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:
"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."

Note- Since supply from DTA to SEZ is considered as inter-state supply, in fact a zero rated supply (if it is for authorized operations) ,So where a person is having place of business both in DTA and SEZ, even though within the same state, then also he shall obtain separate registration for both the places.

(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.

Concept of Deemed Distinct Person Section 25(4)/(5)

(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.

(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 in order to be eligible for grant of registration:
"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."
Note-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.
(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, authorized 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:

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.".

GST New Rule 11: Separate registration for multiple places of business within a State or a Union territory (Chapter-III: Registration Rules)

(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"

Rule 8 of CGST Rule Procedure for Application for registration.-

(1)Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and 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 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") shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, 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.
(b) 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 the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(6) A person applying for registration as a casual taxable person shall be given a temporary 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.

Rule9 of CGST Rule Verification of the application and approval.-

(1)The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of three working days from the date of submission of the application.

(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 three 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.

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 shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG- 05.

(5) If the proper officer fails to take any action, -
(a) within a period of three 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 clarification, information or documents furnished by the applicant under sub-rule (2),the application for grant of registration shall be deemed to have been approved.

Rule 10 of CGST Rule 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 [duly signed or verified through electronic verification code]12 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.

Voluntarily Registration
Section 25(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.

Benefits of Voluntary Registration under GST

- **Provide input tax credit to customers**– Since your business is legally recognized, you can issue taxable invoices. Buyers, in turn, can take input credit on their purchases. This will help expand the customer base and make it more competitive.

- **Take input credit**– Voluntarily registered persons can take input credit on their own purchases and input services like legal fees, consultation fees etc. This will eventually increase their business margin and profitability.

- **Make inter-state sales without many restrictions**– Businesses registered under GST can make inter-state sales without many restrictions. Thus, it widens the potential market for SMEs. These SMEs can also opt for selling their goods online through the e-commerce platform.

- **Be compliant and have good rating**– Registration for GST will ensure that the business is compliant and scalable without any barrier of future registration. Also under GST, compliance rating will be maintained and if this is done correctly, it can attract additional business.

- **Better standing**– A registered business will find it much easier in other business areas such as getting bank loans, renting premises.

Negatives of Voluntary Registration under GST

We discussed the benefits of getting registered under the Goods and Services Tax, however, there is a flip-side to it. Businesses registering voluntarily under GST may have to face extra compliance and working capital liquidity. We are listing down some of these consequences:

- **Technology**– Once of the biggest challenges many small businesses are facing is the technology required for GST. GST registration, returns and payments (exceeding Rs. 10,000) must be made online. This becomes difficult for many small businesses who are used to manual methods.

- **Multiple Return Filing** – Businesses registered under Goods and Services Taxes are required to file three returns every quarter. These returns are GSTR-1, GSTR-2, GSTR-3 and include the details of all purchases, sales, and final tax liability after setting off Input Tax Credit. Failure to file these returns will not only deny the input credit to our buyer but also attract late fees, interest & penalty. Further Compliance rating will get affected negatively.

- **Payment of Tax Liability** – Once registered under GST, the supplier will have the additional responsibility of collecting and depositing taxes with the authorities. This will not only inflate the cost for the buyer but also leverage similar sellers who are not registered under GST.

- **Loss of advantage-** Once you are registered, you will have to collect GST from customers. Unregistered dealers can charge cheaper prices as they cannot collect GST and thus attract more customers.

- **Compliance of GST provisions-** Once you are registered, you are bound to comply with all the provisions of GST Rules, Acts and notifications. All provisions such as issuing GST compliant invoices, paying GST under reverse charge mechanism will start applying to you.

- **Assessment and Penal Provisions** – Once registered under GST, a business will also be legally bound by the assessment & penal provisions of the GST law. This can attract unnecessary interest and penalty to business due to lack of resources to fully comply.

Concept of Deemed Distinct Person Section 25(4)/(5)

(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.

(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 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 PAN, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

(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.

Rule16 of CGST Rule *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.

(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).

Person liable to obtain UIN
Section25 (9) Notwithstanding anything contained in sub-section (*1*),—
(a) any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, 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.
Rule 17 of CGST Rule 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.

[(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 or after receiving a recommendation from the Ministry of External Affairs, Government of India17, 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.

Sec 25 (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.
Sec25 (11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.
Sec 25 (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.

Rule 12(1A) of the CGST Rules How to Furnish details of State/UT in application for registration by a TCS collector in a State where he doesn't have a physical presence
When a person is applying for registration to collect TCS in a State/UT where he does not have a physical presence, he shall mention name of said State/UT in Part A of prescribed application

form for registration. Further, the name of the State/UT in which his principal place of business is located is to be mentioned in Part B of the application form. States/UTs mentioned in Part A and Part B of the application form may be different.

Rule12 of CGST Grant of registration to persons required to deduct tax at source or to collect tax at source MAY 2020 AMENDMENTS

(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 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(1A)Where a person applying for registration to deduct or collect tax in accordance with the provisions of 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

<table>
<tr><td>The name of the State or Union territory in PART A of the application in FORM GST REG-07 and</td><td>Further, the name of the State/UT in which his principal place of business is located is to be mentioned in Part B of the application form.</td></tr>
<tr><td colspan="2">States/UTs mentioned in Part A and Part B of the application form may be different.</td></tr>
</table>

Rule 19 of CGST Rule . 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-1 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 theapplication 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 [sub-rule (2) of rule 8]

[(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 subrule (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.

Section 29 Cancellation *or suspension* Of registration.

Note- By Amendment in Heading itself Provisions to suspend registration provided in the act

(*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 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
Clarification that transfer/change in the ownership of business
Section 29(1)(a) of the CGST Act provides that reason of transfer of business includes "death of the proprietor". Similarly, for uniformity and for the purpose of section 22(3) of the said Act, it is clarified that transfer or change in the ownership of business under said section will include transfer/change in the ownership of business due to death of the sole proprietor
(b) There is any change in the constitution of the business; or
(c) The taxable person, other than the person registered under sub-section (*3*) of section 25, is no longer liable to be registered under section 22 or section 24.
"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."
Proviso inserted in Section 29
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. By Amendment Provisions to suspend registration provided in the act.
(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 there under as may be prescribed; or
(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
(c) any registered person, other than a person specified in clause (*b*), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (*3*) of section 25 has not commenced business within six months from the date of registration; or
(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:
Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.
"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."

CGST Rule 21A: Suspension of registration (Chapter-III: Registration Rules)
(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.

(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, 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.

Rule 21A(3) once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, his registration shall remain suspended during pendency of the proceedings relating to cancellation of registration filed. Such person shall not make any taxable supply during the period of suspension and shall not be required to file any return.

MAY 2020 AMENDMENTS **(New)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 and, accordingly, not charge tax on supplies made by him during the period of suspension.

(4) The suspension of registration under sub-rule (1) or sub-rule (2) 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.

(5) **MAY 2020 AMENDMENTS (New clause)**Rule where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [revised tax invoices] and section 40 [first return] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Bank Account details may be furnished within 45 days of obtaining registration certificate MAY 2020 AMENDMENTS [Notification No. 31/2019

While applying for registration on GST portal, a person is required to furnish the details of his bank account. This requirement has now been relaxed to a limited extent, by inserting a new rule 10A and Inserted rule 21(d).

Rule 10A [newly inserted]: Furnishing Bank Account details post registration	Rule 21(d) [newly inserted] Registration to be cancelled in certain cases
After a certificate of registration in FORM GST REG-06 has been made available, the registered person shall furnish information with respect to details of bank account at the earliest, 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 of "CGST Act" is due to be furnished, whichever is earlier. However, such details are not required to be furnished by persons who have been granted registration by the department on it's own in terms of rule 16 or persons who have taken registration as Tax Deductor at source (u/s 51) or Tax Collector at source (u/s 52). Corresponding amendments are also made in Forms GST REG-01, GST REG-07 and GST REG-12.	If bank account details are not furnished within the prescribed time in terms of rule 10A, then the registration so granted shall be liable to be cancelled.

Rule 23 of CGST Rule Revocation of cancellation of registration.

(1)A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty 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:

Provided 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.

(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 inFORM 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.

Ch 11 Tax Invoice, Credit & Debit Note

Section 31 of CGST Act- Tax Invoice.

Normal Case i.e Other than Continuous supply of goods/services(1)/(2)

(*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 Tax invoice. 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:

Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which––
(a) Any other document issued in relation to the supply shall be deemed to be a tax invoice; or
(b) 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 Rs.200 subject to such conditions and in such manner as may be prescribed;
New Proviso pertaining to tax invoice for services by way of admission to exhibition of cinematograph films in multiplex screens Notification No. 33/2019 MAY 2020 AMENDMENTS

section 31(3)(b) of the CGST Act-A registered person has an option to issue consolidated tax invoice for supplies at the close of e ach day where the value of goods or services supplies is less than Rs. 200; recipient is unregistered and does not require tax invoice.

(New)fourth proviso to rule 46 -Provided also that a registered person, 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.

(New) Rule54 (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.

(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;

Receipt voucher

(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;

Note-Where at the time of receipt of advance

(i)If rate of tax is not determinable, then Tax shall be paid at the rate of 18%

(ii) Nature of supply is not determinable, then Same shall be treated as inter-state supply

Refund voucher

(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 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 subsection (*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;

Payment voucher

(g) A registered person who is liable to pay tax under sub-section (*3*) or subsection (*4*) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

Continuous supply of goods/services(4)/(5)

(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.

Cessation of supply of services

(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.

Supply on sale or return/Approval basis

(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.

Section31A. 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.May 2020 Amendments

Note:

1. Once the invoice is issued as per aforesaid provisions GST is payable even if no payment is received from recipient

2. For all the above category of supply a Tax Invoice should be issued

3. In case of value of goods/services or both supplied is less than Rs 200 then no need to issue a tax invoice in case of B2C transactions

Revised Invoice

i. Person shall issue a revised invoice during the period beginning with the effective date of registration till the date of issuance of certificates of registration to him
ii. It shall be issued within 1 months from the date of issuance of certificates of registration and in such a manner as prescribed.
iii. The expression "Tax Invoice" shall include any revised invoice issued by the supplier in respect of supply made earlier

Note-Consolidated revised tax Invoice

Registered person may issue a consolidated revised tax invoice

(i)In respect of all taxable supplies made to a recipient who is not registered under the act during such period.

(ii)In case of inter-state supplies, where the value of a supply does not exceed two lakh and fifty thousand rupees, to unregistered person

Bill of supply

(i)On supply of Exempt Goods or Services
(ii)Paying tax under composition scheme

Endorsement for Export Invoice
In 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 authorized operations on payment of integrated tax" Or "supply meant for Export/supply to SEZ unit or SEZ developer for authorized operations under bond or letter of undertaking without payment of Integrated Tax"

As the case may be, and shall, also contain the following details, namely-

i. Name and address of the recipient
ii. Address of delivery and
iii. Name of the country of destination

Person is supplying taxable as well as exempted supply

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.

Content of Tax Invoice

Particular	Normal Tax Invoice	Revised Tax Invoice	Bill of supply
Name, Address and GSTIN	Y	Y	Y
Consecutive number series	Y	Y	Y
Date of issue	Y	Y	Y
Name of address & GSTIN or UIN of recipient	Y	Y	N
Other details of unregistered recipient	Y	Y	Y
HSN Code	Y	N	Y
Description of goods or services	Y	N	Y
Quantity of goods	Y	N	N
Total value	Y	N	Y
Taxable value	Y	Y	N
Rate of tax	Y	N	N
Amount of tax charged	Y	N	N
Place of supply	Y	N	N
Address of delivery	Y	N	N
If reverse charge applicable	Y	Y	N
Signature of digital signature	Y	Y	Y
Nature of document	N	Y	N

Notes :

1. Consecutive serial number shall not exceed 16 characters for tax invoice in one/multiple series shall be maintained same for a financial year.
2. A consolidated revised tax invoice for all taxable supplies made to an unregistered person
3. In case of inter-state supply –where value of supply does not exceed Rs 2.5 Lac a consolidated revised tax invoice may be issued separately in respect of all unregistered recipient located in a state

<u>Rule 53(1) of the CGST Contents of revised tax invoice</u>

(a) The word “Revised Invoice”, wherever applicable, indicated prominently;
(b) Name, address and Goods and Services Tax Identification Number of the supplier;
(c) Deleted
(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; and
(i) Deleted
(j) Signature or digital signature of the supplier or his authorized representative.

New contents prescribed for credit and debit notes
Rule 53(1A) of the CGST Contents of credit and debit note

(a)name, address and GSTIN of the supplier
(b) nature of the document;
(c) a consecutive serial number not exceeding 16 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 GSTIN or UIN, 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;
(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 authorized representative.

Content of vouchers	Particular	Receipt voucher	Refund voucher	Payment voucher
	Name, address and GSTIN	Y	Y	Y
	Consecutive number series	Y	Y	Y
	Date of issue	Y	Y	Y
	Name of address & GSTIN or UIN of receipt	Y	Y	Y
	Number & date of receipt voucher issued	N	Y	N
	Description of goods or services	Y	Y	Y
	Amount of advance taken	Y	N	N
	Amount of refund made	N	Y	N

	Amount paid	N	N	Y
	Rate of tax	Y	Y	Y
	Amount of tax charged	Y	Y	Y
	Place of supply	Y	N	Y
	If reverse charge applicable	Y	Y	N
	Signature of digital signature	Y	Y	Y
	Signature of supplier	Y	Y	Y

Rule 55of CGST Transportation of goods without issue of invoice.-

Nature of Supply

(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,

Issue of Delivery Challan

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:-

Particulars of Delivery Challan

(i) Date and number of the delivery challan;

(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) Harmonized 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.

No. of digit of HSN code to be mentioned in invoice And Bill of Supply

	Registered person having annual turnover in P.FY shall mention HSN code as following

S No	Annual turnover in the preceding financial year	Number of digit of HSN Code
1	Upto ruppes one crore fifty Lacs	Nil
2	More than Rs 1Cr 50Lac and upto Rs 5Cr	2
3	More than Rs 5 Cr	4

Section 34 of CGST Act Credit and debit notes.

(*1*) *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 a credit note containing such particulars as may be prescribed.
Note- The amendment is to provide a big relief to taxpayers enabling them to issue single debit/creditnote against multiple invoices issued in a Financial Year.

(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 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) *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 registered person, who has supplied such goods or services or both, shall issue to the Recipient *one or more debit notes for supplies made in a financial year* containing such particulars as may be prescribed.
Note- The amendment is to provide a big relief to taxpayers enabling them to issue single debit/credit note against multiple invoices issued in a Financial Year.

(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.

Section 32 of CGST Act Prohibition of unauthorized 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.

Section 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.

Rules 46, 49 and 54 of the CGST Rules

Signature/ digital signature of the supplier/ his authorized representative not required on

(i) electronic tax invoice,

(ii) electronic bill of supply,

(iii) electronic consolidated tax invoice in case of banking companies etc. and

(iv) Electronic ticket for passenger transportation service.

Note-The electronic tax invoice and electronic bill of supply need to be issued in in accordance with the provisions of the Information Technology Act, 2000.

Rule 46A of CGST Rule 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.

Q-Himanshu, a registered supplier, runs a general store in Ranchi, Jharkhand. Some of the goods sold by him are exempt whereas some are taxable. You are required to advise him on the following issues:

(I) Whether Himanshu is required to issue a tax invoices in all cases, even if he is selling the goods to the end consumers?

(ii) Himanshu sells some exempted as well as taxable goods valuing ` 5,000 to a school student. Is he mandatorily
required to issue two separate GST documents?

Answer

(a) As per section 31(1) of the CGST Act, 2017, every registered person supplying taxable goods is required to issue a tax invoice. Section 31(3)(c) of the CGST Act, 2017 stipulates that every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice Further, as per **section 31(3)(b)** of the CGST Act, 2017 read with rule 46 of the CGST Rules, 2017, a registered person may not issue a tax invoice if:

(I) value of the goods supplied < ` 200,

(ii) the recipient is unregistered; and

(iii) the recipient does not require such invoice.

Instead such registered person shall issue a Consolidated Tax Invoice for such supplies at the close of each day in respect of all such supplies.

(b) As per **rule 46A** of the CGST Rules, 2017, 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. Thus, there is no need to issue a tax invoice and a bill of supply separately to the school student in respect of supply of the taxable and exempted goods respectively.

Rule 54 (2) Tax Invoice in Special Case i.e Insurance, Banking, Financial Institution

Specific changes and relaxation for issuance of invoice on consolidated basis for this sector--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 supplier[may] issue a [consolidated] tax invoice or any other document in lieu thereof, by whatever name called [for the supply of services made during a month at the end of the month][75], 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.

[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 .

Q-A customer may avail numerous services from the Bank / insurer in a given taxable period. Is it mandatory for Banks to issue a tax invoice for each transaction or can the Bank issue a consolidated invoice for the service rendered during the tax period?

Ans-As per the provisions contained in the first proviso to **Rule 47 of the CGST Rules, 2017** an insurer, a banking company or a financial institution, including a NBFC may issue invoices within 45 days from the date of supply of service. Further, sub-rule (2) of **rule 54 of CGST Rules, 2017** provides that such entities may issue any other document in lieu of the tax invoice. Accordingly, such entities may issue a consolidated statement/ invoice/ advice to the customer at the end of the month, with the details of all the charges levied during such month and GST payable thereon.

Q-When a banking company is not required to serially number its invoices / document for supply of its services, how will the service recipient get credit for GST on the services provided by the bank?

Ans--Under **Rule 54(2) of the CGST Rules, 2017** a banking company or a financial institution including a NBFC or an insurer can issue an invoice or any other document in lieu thereof whether or not serially numbered and whether or not containing the address of the recipient but containing other information as mentioned under Rule 46.

There is no restriction on the invoice/document being a consolidated invoice/document but it must bear an identification number, which need not necessarily be serially numbered. The recipient of service will get the credit for GST so long as the bank, etc. uploads the details of the invoice / document under that number with GSTIN of the recipient in its statement if FORM GSTR-1.

Q-Whether commission paid to insurance agents shall be construed as supplies received under Section 9(3) of CGST Act, 2017? If yes, whether the Life Insurance Company can raise a consolidated invoice for such commission payments?
Ans-supplies received from Insurance Agents and provides for the Insurance Company to pay GST on such supplies under Section 9(3) of the CGST Act, 2017. In such cases, the insurance company may issue agent wise consolidated invoice at the end of the month for the supply of services received during the month.

Input service distributor- Rule 54 (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 Services 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 symbolized 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 services 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 authorized representative.

Clarification in respect of goods sent/ taken out of India for exhibition or on consignment basis for export promotion Circular No. 108/27/2019 MAY 2020 AMENDMENTS

I.	Issue	Clarification
1	Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?	The registered person dealing in specified goods shall maintain a record of such goods as per the format at **Annexure** to this Circular.

2	What is the documentation required for sending / taking the specified goods out of India?	The activity of sending / taking specified goods out of India is not a supply. The said activity is in the nature of "sale on approval basis" wherein the goods are sent / taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The specified goods shall be accompanied with a delivery challan . The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, is not required.
3	When is the supply of specified goods sent / taken out of India said to take place?	The specified goods sent / taken out of India are required to be either sold or brought back within 6 months from the date of removal. The supply would be deemed to have taken place, on the expiry of 6 months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period. If the specified goods are sold abroad, fully or partially, within 6 months, the supply is effected, in respect of quantity so sold, on the date of such sale.
4	Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?	When the specified goods sent / taken out of India have been sold fully or partially, within 6 months, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad. When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within 6 months, the sender shall issue a tax invoice on the date of expiry of 6 months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back.
5	Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?	The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India. It has further been clarified in answer to question no. 3 above that the supply would be deemed to have taken place: On the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or On the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months. The sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT,

		if he is otherwise eligible for refund, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been clarified in answer to the question no. 4 above. Further, refund claim cannot be preferred as supply is taking place at a time after the goods have already been sent / taken out of India earlier.

Note-Annexure to the circular

Record of Specified Goods Sent / Taken out of India & Brought Back / Sold Abroad

Folio No.	Description of specified goods	Quantity Unit	Value per unit	Total value of the specified goods	Date of removal	Delivery challan		Shipping bill		Details of goods supplied but not brought back		Invoice		Details of specified goods brought back		Bill of Entry	
						No	Date	No	Date	Qty	Value	No	Date	Qty	Value	No	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)

Ch 12 E-way Bill

Section 68 Inspection of goods in movement i.e E way Bill

(*1*) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (*1*) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (*1*) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Chapter XVI of CGST Rule E-Way Rules

Rule138 of CGSTR Information to be furnished prior to commencement of movement of goods and generation of e-way bill.

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—
(i) in relation to a supply; or
(ii) for reasons other than supply; or
(iii) due to inward supply from an unregistered person,
shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1. – For the purposes of this rule, the expression “handicraft goods” has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 56/2018-Central Tax.

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.

(2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01:
Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.
Explanation 1.– For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.- The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:

Provided that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 maybe generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State
supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated eway bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an ecommerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule***,*** but goods are either not transported or are not transported as per the details furnished in the e-way bill, the eway bill may be cancelled electronically on the common portal within twenty four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.

MAY 2020 AMENDMENTS CHAPTER XVI Rule 138(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Sl. No.	**Distance**	**Validity period**
(1)	**(2)**	**(3)**
1.	Upto 100 km.	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
3.	Upto 20 km	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required.

Provided also that the validity of the e-way bill may be extended within 8 hours from the time of its expiry.

Explanation 1.—For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2.— For the purposes of this rule, the expression "Over DimensionalCargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

(11) The details of the e-way bill generated under this rule shall be made available to the-

(a) supplier, if registered, where the information in Part A of FORM GST EWB- 01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB- 01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—
(a) where the goods being transported are specified in Annexure;
(b) where the goods are being transported by a non-motorised conveyance;
(c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
(d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;
(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017-
(f) where the goods being transported are alcoholic liquor for human consumption,petroleum crude, high speed diesel, motor spirit (commonly known as petrol),natural gas or aviation turbine fuel;
(g) where the supply of goods being transported is treated as no supply underSchedule III of the Act;
(h) where the goods are being transported—
(i) under customs bond from an inland container depot or a container freight station to acustoms port, airport, air cargo complex and land customs station, or from one customsstation or customs port to another customs station or customs port, or
(ii) under customs supervision or under customs seal;
(i) where the goods being transported are transit cargo from or to Nepal orBhutan;
(j) where the goods being transported are exempt from tax under notification No.7/2017-Central Tax (Rate),
(k) any movement of goods caused by defence formation under Ministry of defense asaconsignor or consignee;
(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
(m) where empty cargo containers are being transported; and
(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.
(o) [where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.
Explanation. - The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

Ch 13 Accounts and Records

Section 35 of CGST Act 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.

Person supplying OIDAR services not required to furnish annual return and reconciliation statement Notification No. 30/2019 MAY 2020 AMENDMENTS

Persons compulsorily registered under section 24(xi) of the CGST Act read with rule 14 of CGST Rules supplying OIDAR services from a place outside India to a person in India, other than a registered person, as the class of registered persons who shall not be required to furnish these two returns-	
Section 44(1) of the CGST Act read with rule 80(1) of the CGST Rules-Annual return	Sections 35(3) & 44(2) of the CGST Act read with rule 80(3) of the CGST Rules -Audited annual accounts and a reconciliation statement.
every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52 of the CGST Act, a casual taxable person and a non-resident taxable person, to furnish an annual return.	Every registered person, whose aggregate turnover during a financial year exceeds Rs. 2 crore, to get his accounts audited, and furnish the annual return along with a copy of audited annual accounts and a reconciliation statement.

(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) 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."

Note- Section 35(5) of the CGST Act requires that every registered person whose turnover during a financial year exceeds the prescribed limit (i.e Rs. 2 crore as per Rule 80(3) of the CGST Rules) shall get his accounts audited by a Chartered Accountant or a Cost Accountant.

Provided Books of accounts of Central/State Government or local authority which are subject to audit by CAG or any statutory auditor appointed for auditing the accounts of local authorities are not subject to audit by a Chartered Accountant/Cost Accountant

(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.

Rule 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.

(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.

Rule 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.

Rule 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.

[(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 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.

Clarification regarding E-way Bill

Q 1:- Consider a situation where a consignor is required to move goods from City X to City Z. He appoints Transporter A for movement of his goods. Transporter A moves the goods from City X to City Y. For completing the movement of goods i.e. , from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B. How would the e-way bill be generated in such situations?

A: - It is clarified that in such a scenario, only one e-way bill would be required. Part A can be filled by the consignor and then the e-way bill will be assigned by the consignor to Transporter A. Transporter A will fill the vehicle details, etc. in Part B and will move the goods from City X to City Y. On reaching City Y, Transporter A will assign the said e-way bill to the Transporter B. Thereafter, Transporter B will be able to update the details of Part B. Transporter B will fill the details of his vehicle and move the goods from City Y to City Z.

Q 2: - Consider a situation where a consignor hands over his goods for transportation on Friday to transporter. However, the assigned transporter starts the movement of goods on Monday. How would the validity of e-way bill be calculated in such situations?

A: - It is clarified that the validity period of e-way bill starts only after the details in Part B are updated by the transporter for the first time. In the given situation, Consignor can fill the details in Part A on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill the Part B i.e. the assigned transporter can fill the details in Part B on Monday and the validity period of the e-way bill will start from Monday.

Ch 14 Returns under GST

Section 37 Furnishing details of outward supplies.

(*1*) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, 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 shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Details of Outward Supply shall be furnished Invoice wise in case of Inter-state and Intra-State supplies made to registered person, and Inter-state supplies with invoice value more than Rs 2,50,000 made to unregistered persons. However Consolidated details allowed to furnish when Intra-state supplies made to unregistered persons for each rate of tax, and State wise inter-state supplies with invoice value upto Rs 2,50,000 made to unregistered persons for each rate of tax

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:

Provided further 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:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(2) 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 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 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.

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"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 subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.". {Inserted via: Removal of difficulty Order No. 02/2018-Central Tax}.

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.

Rule 59 of CGST Rule 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, 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 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) 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.

(3) The details of outward supplies furnished by the supplier 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 after the due date of filing of FORM GSTR-1.

(4) The details of inward supplies added, corrected or deleted by the recipient in his FORM GSTR-2 under section 38 or FORM GSTR-4 or FORM GSTR-6 under section 39 shall be made available to the supplier electronically in FORM GSTR-1A through the common portal and such supplier may either accept or reject the modifications made by the recipient

and FORM GSTR-1 furnished earlier by the supplier shall stand amended to the extent of modifications accepted by him.

Section 38 Furnishing details of inward supplies

(*1*) 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 verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (*1*) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (*1*) of section 37.

(2) 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 furnish, electronically, the details of inward supplies of taxable goods orservices or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

Provided that the Commissioner may, for 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:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

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

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (*2*) or sub-section (*4*) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

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

Provided that no rectification of error or omission in respect of the details furnished under sub-section (*2*) shall be allowed after furnishing of the return under section 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.

Rule 60. Form and manner of furnishing details of inward supplies.-

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of inward supplies of goods or services or both received during a tax period under sub-section (2) of section 38 shall, on the basis of details contained in Part A, Part Band Part C of FORM GSTR-2A, prepare such details as specified in sub-section (1) of the said section and furnish the same in FORM GSTR-2 electronically through the common portal, either directly or from a Facilitation Centre notified by the Commissioner, after including therein details of such other inward supplies, if any, required to be furnished under sub-section (2) of section 38.

(2) Every registered person shall furnish the details, if any, required under subsection (5) of section 38 electronically in FORM GSTR-2.

(3) The registered person shall specify the inward supplies in respect of which he is not eligible, either fully or partially, for input tax credit in FORM GSTR-2 where such eligibility can be determined at the invoice level.

(4) The registered person shall declare the quantum of ineligible input tax credit on inward supplies which is relatable to non-taxable supplies or for purposes other than business and cannot be determined at the invoice level in FORM GSTR-2.

(4A) 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 and the said recipient may include the same in FORM GSTR-2.

(5) 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 and the said recipient may include the same in FORM GSTR-2.

(6) 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 and the said deductee may include the same in FORM GSTR-2.

(7) 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 and such person may include the same in FORM GSTR-2.

(8) The details of inward supplies of goods or services or both furnished in FORM GSTR-2 shall include the-
(a) invoice wise details of all inter-State and intra-State supplies received from registered persons or unregistered persons;
(b) import of goods and services made; and
(c) debit and credit notes, if any, received from supplier.

Section 39 of CGST Act Furnishing of returns.

Return by Registered Person

~~**Sec 39** (*1*) 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 orsection 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner~~ ~~*and within such time*~~ ~~as may be prescribed, 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 as may be prescribed~~

~~*"Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein."*~~

Rule 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 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 specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(2) Part A of the return under sub-rule (1) shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods.

(3) Every registered person furnishing the 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 Part B of the return in FORM GSTR-3.

(4) 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 Part B

of the return in FORM GSTR-3 and such return shall be deemed to be an application filed under section 54.

Rule 61(5) of the CGST Rules Form GSTR-3B to be treated as a return furnished under section 39 of the CGST Act MAY 2020 AMENDMENTS

Rule 61(5) of the CGST Rules provide that GSTR 3B shall be a return u/s 39 of CGST Act, 2017 and such rule is **amended retrospectively with effect from 1st July, 2017.** ..

(5)Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 or in **FORM GSTR-2** under section 38 has been extended, the return specified in sub-section (1) of section 39 shall, in such manner and subject to such conditions as the Commissioner may, by notification, specify, be furnished in **FORM GSTR-3B** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:
Provided that where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3**.

Relevance and Manner of Submission of GSTR 3B DELETED FOR MAY 2020 EXAM ONWARDS

~~(6) Where a return in FORM GSTR-3B has been furnished, after the due date for furnishing of details in FORM GSTR-2—~~
~~(a) Part A of the return in FORM GSTR-3 shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2and based on other liabilities of preceding tax periods and PART B of the said return shall be electronically generated on the basis of the return in FORM GSTR-3B furnished in respect of the tax period;~~

~~(b) the registered person shall modify Part B of the return in FORM GSTR-3 based on the discrepancies, if any, between the return in FORM GSTR-3B and the return in FORM GSTR-3 and discharge his tax and other liabilities, if any;~~

~~(c) where the amount of input tax credit in FORM GSTR-3 exceeds the amount of input tax credit in terms of FORM GSTR-3B, the additional amount shall be credited to the electronic credit ledger of the registered person.]~~

~~NOTE- GSTR-3B is a simple return containing summary of outward and inward supplies liable to reverse charge, eligible ITC; payment of tax etc. Thus, GSTR-3B does not require invoice-wise data of outward supplies. FORM GSTR-3B is notified as the form for return by the Commissioner when the due dates for furnishing GSTR-1 and GSTR-2 get extended. It can be submitted electronically through the common portal, either directly or through a notified Facilitation Centre.~~

Return by Composition Taxpayers

~~**Sec 39** (2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.~~

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(2) A registered person paying tax under the provisions of section 10, shall, for each financialyear 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.

Rule 62. Form and manner of submission of quarterly return by the composition supplier. **MAY 2020 AMENDMENTS**

97.-(1) Every registered person [paying tax under section 10 or paying tax by availing the benefit of notification No. 02/2019

(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,][98] electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(1) Every registered person paying tax under section 10 shall, on the basis of details contained in FORM GSTR-4A, and where required, after adding, correcting or deleting the details, furnish the quarterly return in FORM GSTR-4 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

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[~~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 return under sub-rule (1) shall 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.

(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 or by availing the benefit of notification No. 02/2019 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 of input tax credit on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme or opting for paying tax by availing the benefit of notification of 02/2019
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(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 [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) A registered person who ceases to avail the benefit of notification No. 02/2019, shall, where required, furnish a statement in **FORM GST CMP-08** for the period for which he has paid tax by availing the benefit under the said notification till the 18th day of the month succeeding the quarter in which the date of cessation takes place 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 cessation happens.

Return by Registered person required to TDS under the provisions of section 51

Sec 39 (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.

Rule 66. Form and manner of submission of return by a person required to deduct tax at source. MAY 2020 AMENDMENTS

.-(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 deductees ~~suppliers in **Part C** of **FORM GSTR-2A** and **FORM-GSTR-4A**~~ on the common portal after ~~the due date of~~ filing of **FORM GSTR-7** for claiming the amount of tax deducted in his electronic cash ledger after validation.

Note- Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 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).

Return by Input Service Distributor

Sec 39 (4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

Rule 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.

Return by Non-resident taxable person

Sec 39 (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 twenty 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.

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.

Rule 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.

Rule 64. Form and manner of submission of return by persons providing onlinecinformation and database access or retrieval services

Every registered person providing online information and data base access or retrieval services from a place outside India to a person in India other than a registered person shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.

Extension of time limit for furnishing Return

Sec 39 (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.

Due date for Payment of Tax

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~~**Sec 39** (7) Every registered person, who is required to furnish a return under sub-section (*1*) or sub-section (*2*) 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.~~

~~*"Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.*~~

"(7) 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 subsection (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:

Provided that every registered person furnishing return under the proviso to subsection (1) shall pay to the Government, 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, in such form and manner, and within such time, 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."

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Sec 39 (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.

Rectification of omission in Return i.e Revised Return

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (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 ~~in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed~~ 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 due date for furnishing of return for the month of September or second quarter following ~~the end of the financial year~~, the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

Sec 39 (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 has not been furnished by him.

Section 52 of CGST Act Collection of tax at source. Electronic commerce operator
(*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.
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:

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.

“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 ~~31st January, 2019~~. 07th February, 2019.

Rule 67. Form and manner of submission of statement of supplies through an e-commerce operator MAY 2020 AMENDMENTS
(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) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers ~~[in **Part C** of **FORM GSTR-2A**~~**]111** on the common portal after the due date of filing of **FORM GSTR-8** for claiming the amount of tax collected in his electronic cash ledger after validation.

Note- Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

Section 52 (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.
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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 subsection (*1*) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September 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.

(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 subsection (*4*) do not match with the corresponding details furnished by the supplier under 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.

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.

GSTR-1	After 1st but till 10th of next Month Details of Outward Supplies to be filled by 10th of next month
GSTR-2A	After 11th but till 15th of next month t Details of outward Supplies made by Supplier to the recipient for modification /accept/reject
GSTR-2	After 11th but till 15th of next month Finalization of ITC to be transferred to Electronic Credit. Ledger
GSTR-1A	16th - 17th of next month Modification / Deletion / Addition made by Recipient is made available to the supplier for acceptance/rejection If changes accepted by the supplier — GSTR-1 auto-updated - If changes rejected by the supplier - heads to Mismatch and would be added in Output Tax Liability.
GSTR-3	20th of next month Final Return of Taxpayer

Note- The above Table is showing Flow of Return

Section 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.

Claim of

Section 41 Claim of input tax credit and provisional acceptance thereof.

(*1*) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger

(*2*) The credit referred to in sub-section (*1*) shall be utilized only for payment of self assessed output tax as per the return referred to in the said sub-section.

Section 42 Matching, reversal and reclaim of input tax credit.

(*1*) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched––

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the “supplier”) in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

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

(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

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

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

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

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (*5*), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (*9*) of section 39.

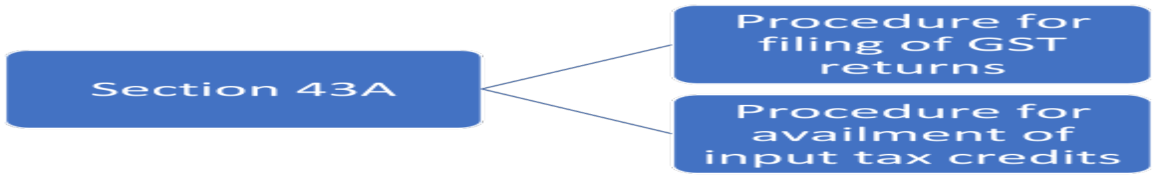
(8) A recipient in whose output tax liability any amount has been added under subsection (*5*) or sub-section (*6*), shall be liable to pay interest at the rate specified under sub-section (*1*) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

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

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

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (*7*) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (*3*) of section 50.

Section 43A inserted vide CGST (Amendment) Act, 2018.



Section"43A. (1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under subsection
(1) Of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.
(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.
(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.
(4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.
(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.
(6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.
(7) For the purpose of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.
(8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,—
(i) Within six months of taking registration;
(ii) Who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount, shall be such as may be prescribed.".

Section 44 Annual returns

(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 for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December 2019.
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 return 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.
Explanation.- For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the ~~31st March, 2019.~~ ~~30th June, 2019.~~ ~~*31st August, 2019*~~. *30th November 2019.*

Filing of Annual return has been made optional for the registered person with T/O < 2 crores.
Notification No. 47/2019 MAY 2020 AMENDMENTS

It is notified that, filing of annual return is optional for the tax payers with turnover up to Rs.2 Cr. for the financial year..However, such option has been provided only for the Financial years 2017-18 and 2018-19. Further, it is specified that, if the tax payer doesn't file the same with in the due date, it will be deemed to be filed on the due date.
Analysis -Since, the return is optional, the tax payers who wish to make any rectifications can file the same.. Further, since it is mentioned that the same will be deemed to be filed, the filing facility may not be available after the due date for filing the same.

Person supplying OIDAR services not required to furnish annual return and reconciliation statement Notification No. 30/2019 MAY 2020 AMENDMENTS

Persons compulsorily registered under section 24(xi) of the CGST Act read with rule 14 of CGST Rules supplying OIDAR services from a place outside India to a person in India, other than a registered person, as the class of registered persons who shall not be required to furnish these two returns-	
Section 44(1) of the CGST Act read with rule 80(1) of the CGST Rules-Annual return	Sections 35(3) & 44(2) of the CGST Act read with rule 80(3) of the CGST Rules -Audited annual accounts and a reconciliation statement.
every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52 of the CGST Act, a casual taxable person and a non-resident taxable person, to furnish an annual return.	Every registered person, whose aggregate turnover during a financial year exceeds Rs. 2 crore, to get his accounts audited, and furnish the annual return along with a copy of audited annual accounts and a reconciliation statement.

Section 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.

Section 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.

Section 47 Levy of late fee.

(*1*) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of Rs.100 for every day during which such failure continues subject to a maximum amount of Rs.5000.

(*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 Rs.100 for every day during which such failure continues subject to a maximum of an amount calculated 0.25% ofhis turnover in the State or Union territory.

Section 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, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 *and to perform such other functions* in such ma nner 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.

Note-**Rule 83(3) of the CGST Rules Time period available to a sales tax practitioner/ tax return preparer enrolled as a GSTP**

Sales tax practitioner and a tax return preparer shall be eligible to remain enrolled as GSTP only if he passes the examination conducted by NACIN (National Academy of Customs, Indirect Taxes and Narcotics) within **30 months (Earlier 18 Months)** from the appointed date.

Note- **Rule 83(8) of the CGST Rules -Scope of activities that can be undertaken by a GSTP enhanced**

(a) furnish the 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.

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(f) furnish information for generation of e-way bill;

(g) furnish details of challan in the prescribed form;

(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.

Ch 15 Payment of Taxes

Types of Payments to be made by Registered Person

In the GST regime -

Transaction	Tax
For Intra State Supply	CGST + SGST or UTGST
For Inter State Supply	IGST
Specified Transactions	TDS/TCS
If Applicable	Interest, Penalty, Fees and Other Payment

Features of payment process under GST

The payment processes under GST Act(s) have the following features :

a) Electronically generated challan from GSTN
b) No use of manually prepared challan
c) Facilitation for the tax payer
d) Convenience of making payment online.
e) Logical tax collection data in electronic format
f) Faster remittance of tax
g) Paperless transactions
h) Speedy accounting and reporting
i) Electronic reconciliation of all receipts
j) Simplified procedure for banks
k) Warehousing of Digital Challan

Mode of Payment :

i. Internet Banking,, or
ii. By using Credit or Debit Cards, or
iii. National Electronic Fund Transfer (NEFT, or
iv. Real Time Gross Settlement (RTGS), or
v. By such other mode prescribed by the Government

Rule 87 of CGST Rule Electronic Cash Ledger

(Rule87. Electronic Cash Ledger

(1) The electronic cash ledger under sub-section (1) of section 49 shall be maintained in 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 PMT06 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:

Provided that the challan in FORM GST PMT-06 generated at the common portal shall be valid for a period of fifteen days.

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~~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 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.~~

Note-The second proviso to sub-rule (2) which gave an option to a person supplying OIDAR services from a place outside India to a non-taxable online recipient, to generate challan through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax has been omitted.

(3) The deposit under sub-rule (2) shall be made through any of the following modes, namely:-
(i) Internet Banking through authorised banks;
(ii) Credit card or Debit card through the authorised bank;
(iii) National Electronic Fund Transfer or Real Time Gross Settlement from any 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 may be notified by the Commissioner in this behalf;

(b) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

(c) Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any *ad hoc* deposit:

[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 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.

(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 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.

MAY 2020 AMENDMENTS

Rule87 (9) Any amount deducted under section 51 or collected under section 52 and claimed ~~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 ~~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 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.

Note-The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be refunded in accordance with the provisions of section 54

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.

May 2020 Amendments

Section 53A Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the SGST Act or the UTGSTAct, 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.

Rule 86 of CGST Rule . 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 [or section 49A or section 49B]

Note- The electronic credit ledger would be debited to the extent of discharge of any liability in accordance with the provisions of section 49, 49A and 49B of the CGST Act.

(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.

(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.

Note-The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be refunded in accordance with the provisions of section 54

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.

Some Relevant Terms

CPIN 1. CPIN Stands for Common portal Identification Number. 2. It is created for every Challan successfully generated by the taxpayer. 3. It is a 14-digit unique number to identify the challan. 4. CPIN remains valid for a period of 15 days
CIN 1. If stands for Challan Identification number (CIN) 2. It is generated by authorised bankiRBl when paymet is actually received by such authoriesed banks or RBI & credited in the relevant Govt. A/c 3. It is indication of successful payment of account 4. CIN is communicated by authoriesed bank to taxpayer as well as to GSTN 5. It is 17 digit number that is 14 digit CPIN plus 3 digit Bank code.
BRN It is a bank reference number is the transaction number given by the bank for payment against a Challan

Rule 85 of CGST Rule 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 by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;

(c) The amount of tax and interest payable as a result of mismatch under section 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, [section 49A and section 49B]89, 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.

Note- ***Notification No. 03/2019 Payment*** **of liability to be made in accordance with the provisions of sections 49, 49A and 49B of the CGST Act**

Rule 85(3) of the CGST Rules provided that payment of every liability by a registered person as per his return should be made by debiting the electronic credit ledger or the electronic cash ledger in accordance with section 49, 49A and 49B of the CGST Act.

(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.

Section 50 of CGST Act 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 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 recommendations of the Council.
MAY 2020 AMENDMENTS 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 such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (*10*) of section 42 or undue or excess reduction in output tax liability under sub-section (*10*) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Section 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 1 % 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 Rs.250000:

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) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.

(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.

Note-As per Section 39 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. The details furnished by the deductor shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A and FORM-GSTR- 4A on the common portal after the due date of filing of FORM GSTR-7. 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 Section39.

(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 section 74.

(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.

Note- Categories of persons not liable to deduct TDS

1. When goods and/or services are supplied from a public sector undertaking (PSU) to another PSU, whether or not a distinct person

2. When supply of goods and/or servicees takes place between one person to another person specified in section 51(1)(a)(b))(c))(d) of the CGST Act.

Note- **Applicability of the provisions of section 51 (TDS) of the CGST Act on certain notified persons** ***Circular No. 76/50/2018***

Authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with 51% or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source as per Section 51.

Provision related to Electronic Commerce Operator

Section 2 (44) of CGST Act "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;

Section 9 (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.

Section 24(x) of CGST Act Compulsory registration for e-commerce operator

Not all but those e-commerce operators who are required to collect tax at source under section 52 of the CGST Act would only be required to obtain compulsory registration.

Notified ECO

I. Services by way of transportation of passenger:

An e-commerce operator such as Ola, Uber, etc. provides services of transportation of passenger by a Radio Taxi. Similarly other players provide such service using different means such as Motor cab, Maxi cab, Motor Cycle, etc.

In this case, Ola or Uber acts as an intermediary between the local cab vendors and the actual recipient of the taxi service. Now , to disguise the fact that actual supplier is the local vendor, the act specifies that the e-commerce operator shall be the supplier of service and accordingly all the provisions of the act shall apply to such operator as if he is the supplier liable to pay tax in respect of such services.

II. Services by way of accommodation in hotels, guest house, club, etc.:

We can take example of players like OYO, Make My Trip, etc. who are majorly involved in providing services by way of accommodation in hotels, guest house, clubs, etc. Two situations may arise in this type of service which is as follows:

a) Where the actual supplier is not liable to get registered under GST:

Here in this case the actual supplier has been kept in disguise and only one transaction takes place between e-commerce operator and the actual recipient and the e-commerce operator shall be the supplier of service by way of accommodation and accordingly all the provisions of the act shall apply to such operator as if he is the supplier liable to pay tax in respect of such services.

b) Where the actual supplier is liable to get registered under GST:

Number of transactions involved in this case shall be two. First transaction takes place between actual supplier, i.e. owner of hotel and the actual recipient which shall be classified as accommodation service and the second transaction involved is of commission agent between actual supplier and e-commerce operator. GST shall be levied in each of the transaction separately in accordance with the provisions of the act..

III. Services by way of Miscellaneous Utilities such as house-keeping, plumbing, carpentering, etc

We can take example of Urban clap, House joy, etc. who is majorly involved in providing services by way of miscellaneous utilities at the doorstep of the service recipient. Two situations may arise in this type of service which is as follows:

a) Where the actual supplier is not liable to get registered under GST:

Here in this case the actual supplier has been kept in disguise and only one transaction takes place between e-commerce operator and the actual recipient and the e-commerce operator shall be the supplier of service by way of miscellaneous utilities and accordingly all the provisions of the act shall apply to such operator as if he is the supplier liable to pay tax in respect of such services.

b) Where the actual supplier is liable to get registered under GST:

Number of transactions involved in this case shall be two. First transaction takes place between actual supplier, i.e. carpenter or plumber, etc. and the actual recipient which shall be classified as service by way of miscellaneous utilities and the second transaction involved is of commission agent between actual supplier and e-commerce operator. GST shall be levied in each of the transaction separately in accordance with the provisions of the act.

Section 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.
NN 52/2018 Rate Notified by CBIC on recommendation of GST Council is 0.5% under CGST Act.

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.

Rule 67of CGST Rule Form and manner of submission of statement of supplies through an ECO
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.

The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A on the common portal after the due date of filing of FORM GSTR-8.

(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.

(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, inspectionor 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 subsection (*1*) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

Note- Rectification of Errors / Omissions in Monthly Statements Allowed in following manner
Make rectifications in Statement itself
Rectify in statement furnished for the month in which errors/omissions come to notice ,Here Interest @ 18% p.a. is also payable. Rectification allowed maximum by 10th Oct (after end of FY) However, if relevant annual statement has been filed prior to such date, then rectification is permissible only upto date of furnishing of such annual statement.

(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.

Note-Rule 87 (9) Any amount deducted under section 51 or collected under section 52 and claimed 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 in accordance with the provisions of rule 87. It means GSTR 8 of ECO to be matched with GSTR 1 of Supplier.

(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.

Note- **As per Rule 78. Matching of details furnished by the e-Commerce operator with the details furnished by the supplier.-**

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1,
(a) State of place of supply; and
(b) net taxable value:

Provided that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

(9) Where the details of outward supplies furnished by the operator under subsection (*4*) do not match with the corresponding details furnished by the supplier under section 37 *or section 39*, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

Note- **Section 52(9) of the CGST Act Provision related to mismatch of ECO details**
Where the details of outward supplies furnished by the Electronic commerce operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37 (GSTR-1)**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.

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.

Some Circulars

Question 1:
Foreign e-commerce operator do not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such e-commerce operator and if yes, how will foreign e-commerce operator obtain registration?
Answer:-
Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State / UT. If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an agent on his behalf.

Question 2:
Under multiple e-commerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS?

Answer:-
TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.

Ch 16 Audit and Assessments

Section 2(13)of CGST Act "Audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made there under 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 there under.

Section2 (11) "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

Section 59 Self assessments.

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

1.Determine Tax liability on the basis of Invoice

2.Check the Returns filed, payment and particulars indicating the ITC claimed
3.Submit the periodical Returns u/s 39

If Proper Officer, find that Self-Assessment is not in order, and

Assessee fails to provide records and the Department is unable lo issue demand then PO shall do Best Judgement Assessment

Section 60 Provisional assessment.

(*1*) Subject to the provisions of sub-section (*2*), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

(3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (*1*), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional

Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

(4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (*7*) of section 39 or the rules made thereunder, at the rate specified under sub-section (*1*) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

(5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (*3*), subject to the provisions of sub-section (*8*) of section 54, interest shall be paid on such refund as provided in section 56.

Section 61 Scrutiny of returns.

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Note
2TSection 65 of CGST Act 2017: Audit by Tax Authorities
2TSection 66 2TSpecial audit.
Section 67 of CGST Act - Power of inspection, search and seizure
Section 73 of CGST Act, 2017 Determination of tax not paid

Section 74 Determination of tax not paid

Effect of Final Assessment

a) If Final Tax > Provisional Tax Further Demand raised on Assessee with interest 18% p.a. u/s Sec. 50

b) If Final Tax < Provisional Tax Refund due, credited to Consumer Welfare Fund with interest 9% p.a, u/s 56

Section 62 Assessment of non-filers of returns.
(*1*) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(*2*) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (*1*), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (*1*) of section 50 or for payment of late fee under section 47 shall continue.

Section 63 Assessment of unregistered persons.

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (*2*) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Section 64 Summary assessment in certain special cases

(*1*) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

(2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (*1*) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

Section 65 Audit by tax authorities.

(*1*) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) The officers referred to in sub-section (*1*) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-section (*1*) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.––For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the registered person,—
Audit by tax authorities.
(i) to afford him the necessary facility to verify the books of account or other documents as he may require;
(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (*1*) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Note

Power to Order for Audit is with the Commissioner to undertake audit of registered person. Au dit u/s 65 shall be conducted bu the proper officer with assistance of the team of officers.

Notice to Registered Persons to be given at least 15 working days prior to the con of audit·

Audit Period: for a financial year or multiples thereof·

Place ofAudit: at the place of business of the registered person or in their office·

Commencement of audit shall be the Date on which the records are made avail or the actual institution of audit at the place of business, whichever is later

Time Limit for Completion: Within 3 months from the date of commencement·

Audit Findings & Observations to be intimated within 30 days from the conclusion the audit·

Tax Avoidance is detected, action u/s 73 or 74 for determination of Tax amount will be taken up .

Section 66 Special audit

(*1*) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

(3) The provisions of sub-section (*1*) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force

Ch 17 Job Worker

Sec2 (88) “principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

Registration

Section 22. (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.

“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

Explanation.—For the purposes of this section,—

(i) the expression “aggregate turnover” shall include all supplies made by thetaxable 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;

Section 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.

Section 141 Transitional provisions relating to job work.

(1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

(2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

Section 143 Job work procedure.

(1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—
(i) where the job worker is registered under section 25; or
(ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

Note Nov 19 Amendments - Registered person (Principal) is allowed to send inputs or capital goods to a job worker for job work without payment of tax subject to the conditions, *inter alia*, that the inputs and capital goods are brought back within a period of 1 year and 3 years respectively.

Provide that the period of 1 year and 3 years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding 1 year and 2 years respectively.

(2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (*a*) of sub-section (*1*) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (*b*) of sub-section (*1*) within a period of one year of their being sent out, it shall be

deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

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

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

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

Rule 45 of CGSTR 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, [and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.]

(2) The challan issued by the principal to the job worker shall contain the details specified in rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be included in FORM GST ITC-04furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter[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.]

May 2019 Amend-now the said details may be furnished on or before the 25th day of the month succeeding the said quarter or within such further period as may be extended by the Commissioner by a notification in this behalf.

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143,it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

Explanation.- For the purposes of this Chapter,-
(1) the expressions “capital goods” shall include “plant and machinery” as defined in the Explanation to section 17;
(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-
(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
(b)the value of security shall be taken as one per cent. of the sale value of such security.

Rule 45 (May 2019 Amendments)Removal under the cover of Challan : The inputs, semi-finished goods or capital goods shall be ***sent to the job worker under the cover of a challan*** issued by the principal, including where such goods are sent directly to a job-worker and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker.

Provided that the challan issued by the principal may be endorsed by the job worker, indicated 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, 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.

Rule 55 of CGST 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.

Rule 119. Declaration of stock held by a principal and job-worker.-
Every person to whom the provisions of section 141 apply shall, within [the period specified in rule 117 or such further period as extended by the Commissioner]137, submit a declaration electronically in FORM GST TRAN-1, specifying therein, the stock of the inputs, semi-finished goods or finished goods, as applicable, held by him on the appointed day.

Rule 138 E way Bill
where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Clarification
Whether custom milling of paddy by Rice millers for Civil Supplies Corporation is liable to GST or is exempted
Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics.
Conclusion:
1. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.
2. In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption and corresponding notifications issued under IGST and UTGST Acts.
3. Therefore, it is hereby clarified that milling of paddy into **rice on job work basis, is liable to GST at the rate of 5%, on the processing charges (and not on the entire value of rice).**

Ch 18 Advance Ruling

Deemed as Public Servants [Sec.156]

Advance Ruling [Sec.95]	means a decision provided by the Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
National Appellate Authority	"National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A.
Activity	Supply of goods or services being undertaken or porposed to be undertaken by the applicant
Applicant	Any person Registered under GST or Desirous of obtaining GST registration
Joint Venture in India	Contractual Arrangement where two or more persons undertake an economic activity subject to Joint Control, and one or more of the Participants or Partners or Equity-holders is a Non-Resident having substantial interest in the Arrangement.
Issues to seek Advance Ruling	a) Classification of Goods / Services b) Applicability of any Notification c) Determination of time and value of supply of goods or services or both d) Determination of admissibility of ITC paid or deemed to have been paid. e) Determination of the liability to pay tax on any goods or services or both f) Determination on whether applicant is required to be registered g) Determination on whether any particular thint by the applicant results in a supply
AAR	a) CG and the State Government shall appoint an officer of the rank of JC as member of AAR b) State Appointed Authority shall be deemed to be the Authority for AAR in respect of that State / UT

Powers of AAR	1. To exercise the powers of a Civil Court and to regulate its own procedure 2. To hear and determine all applications and petitions. 3. To pass appropriate orders and to re-open the hearing of any case for sufficient cause, before pronouncement of its Order / Advance Ruling. 4. To give directions for examination of any records and submission of report and conduction of any technical, scientific or market enquiry of any goods or services. 5. To modify and amend the Advance Ruling. 6. Rectification of order within a period of 6 months from the date of the order.
Application to AAR	1. Application : Form GST ARA-1 2. Signatory : Application and other relevant documents should be signed by the Applicant 3. Withdrawal : within 30 days from the date of application. 4. Rejection of Application by AAR : a) If issues pending with some Authority, b) If question raised is same as already decided by a Court or Tribunal. [Notice / Hearing the Applicant is must, before passing an order. Rejection Order should state reasons thereof.
Procedure to be adopted by AAR	1. AAR to forward a copy of the application to the Commissioner. 2. After examining the application & records, the application may be either allowed or rejected. 3. If the application is allowed, AAR shall examine such further material placed before it or obtained by it, and it shall pronounce its Advance Ruling on the question specified in the application. 4. The Advance Ruling shall be pronounced in writing within 90 days from the receipt of application. a) Copy of the Order / Advance Ruling shall be sent to the Applicant and the Commissioner, the concerned officer of Central Tax and State / Union Territory Tax, The jurisdictional officer of Central Tax and State / Union Territory Tax, and the Authority
Difference of Opinion	If the members of the Authority differ on any question on which the advance ruling is sought, they shall state the points on which they differ and make a reference to the Appellate Authority for Advance Ruling for hearing and decision on such question.

Appeal to appellate Authority [CGST S.99]	Situation: The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling by AAR, may appeal to the Appellate Authority. Constitution of Appellate Authority : Appellate Authority for AR constituted under SGST / UTGST Act shall be deemed to be the Appellate Authority in respect of that State or Union Territory.
Application to AA	To be made within 30 days from the date on which the filling.
Procedure to be adopted by AA [S.98]	1. Appellate Authority may confirm or modify the ruling appealed. 2. Order to be passed within 90 days from the date of filing of the appeal u/s 100 or a reference is made u/s 98(5). 3. If members of AA differ on any points, it shall be deemed that no advance ruling can be issued. 4. Copy of the Order / AR shall be sent to the – a) The applicant and the ppellant b) The concerned officer of Central Tax and State / Union Territory Tax, The jurisdictional officer of Central Tax and State / Union Territory Tax, and the Authority
Nature of Advance Ruling / Order	1. The Advance Ruling / Order by AA shall be binding on the Applicant for the specified matters or the Commissioner and authorities subordinate to him with reference to the Applicant. 2. It cannot be treated as a precedent and applied to other cases. It only has a persuasive value. 3. Ruling is valid for a period from the date of such ruling to date of order declaring the ruling void. 4. If there is a change in law or fact, the Advance Ruling will not bind the Applicant and Department. Applicant is not bound to undertake the proposed activity for which Ruling is obtained.
Void Ruling	If it is found, either on Commissioner's representation or otherwise, that the ruling has been obtained by Fraud, or Misrepresentation of Facts, Ruling shall be declared as void ab initio. Effect : The Act shall apply to the Applicant, as if such Advance Ruling was not made

Section101A Constitution of National Appellate Authority for Advance Ruling

(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.

(2) The National Appellate Authority shall consist of—

(i) The President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:
Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:
Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.
(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.
(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.
(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.
(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:
Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.
(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.
(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.
(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:
Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly

appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).

(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

Section101B. Appeal to National Appellate Authority

(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting advance rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorized by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority:

Provided that the officer shall be from the States in which such advance rulings have been given.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:

Provided that the officer authorized by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:
Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.
Explanation.— For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.
(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Section 101C. Order of NAA

(1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorized by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.
(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.
(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.
(4) A copy of the advance ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorized by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.

Section 102. Amendment of Order
The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101 or Section 101C, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant , the Authority or the Appellate Authority within a period of six months from the date of the order:
Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Section 103. Binding of Ruling

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

(a) On the applicant who had sought it in respect of any matter referred to in subsection

(2) Of section 97 for advance ruling;

(b) On the concerned officer or the jurisdictional officer in respect of the applicant.

(1A) The advance ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961;

(b) The concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.

(2) The advance ruling referred to in sub-section (1) and sub-section (1A) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Section 104. Where ruling pronounced by suppression of or misrepresentation of facts

(1) Where the Authority or the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 or under Section 101C has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made *Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.*

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Section 105. Power of Authority

(1) The Authority or the Appellate Authority or the National Appellate Authority shall, for the purpose of exercising its powers regarding—

(a) Discovery and inspection;

(b) Enforcing the attendance of any person and examining him on oath;

(c) Issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.
(2) The Authority or the Appellate Authority or the National Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

Section 106. The Authority or the Appellate Authority or the National Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

Meaning
GST
Custom
Means a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation or exportation (Sec 28 E(b))

Applicant
GST -any person registered or d e s i r o u s o f o b t a i n i n g registration under this Act

Custom- (i) holding a valid Importer-exporter Code Number granted under section 7 of the Foreign Trade (Development and Regulation) Act, 1992; or
(ii) exporting any goods to India; or
(iii) with a justifiable cause to the satisfaction of the Authority, who makes an application for advance ruling under section 28H;

Matter where Advance Ruling can be obtained
GST
(a) classification of any goods or services or both
(b) a pplicability of a notification issued under the provisions of this Act
(c) determination of time and value of supply of goods or services or both
(d) a dmissibility of input tax credit of tax paid or deemed to have been paid
(e) determination of the liability to pay tax on any goods or services or both
(f) whether applicant is required to be Registered
(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term
Custom
a)Classification of any goods under the CTA, 1975
b)Applicability of a Exemption notification issued under Section 25(1) having a bearing on the rate of duty

c) The principles to be adopted for the purposes of determination of value of the goods
d) applicability of notifications issued in respect of tax or duties under this Act or the Customs Tariff Act, 1975 or any tax or duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act or the Customs Tariff Ac
e) Applicability of notification issued under this Act or CTA, 1975.
F) Determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975
g) any other matter as the Central Government may, by notification, specified
Appeal to appellate Authority

GST -The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

Custom -means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961

Section 95 Definitions.

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

Section171. **Anti-profiteering measure**

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.
(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.
(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub- section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:
Provided that no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.
Explanation.— For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

In this Chapter, unless the context otherwise requires,—
(a) “advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(b) “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99;

(c) “applicant” means any person registered or desirous of obtaining registration under this Act;

(d) “application” means an application made to the Authority under sub-section (1) of section 97;

(e) “Authority” means the Authority for Advance Ruling referred to in section 96.

Section 96 Authority for advance ruling.

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Section 97 Application for advance ruling.

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—
(a) classification of any goods or services or both;
(b) applicability of a notification issued under the provisions of this Act;
(c) determination of time and value of supply of goods or services or both;
(d) admissibility of input tax credit of tax paid or deemed to have been paid;
(e) determination of the liability to pay tax on any goods or services or both;
(f) whether applicant is required to be registered;
(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Section 98 Procedure on receipt of application.

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorized representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

Section 99 Appellate Authority for Advance Ruling.

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Section 100 Appeal to Appellate Authority.

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to theAppellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Section 101 Orders of Appellate Authority

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

Section 102 Rectification of advance ruling

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Section 103 Applicability of advance ruling.

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—
(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
(b) on the concerned officer or the jurisdictional officer in respect of the applicant. Rectification of advance ruling.
.
(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed

Section 104 Advance ruling to be void in certain circumstances

(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Section 105 Powers of Authority and Appellate Authority.
(1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—
(a) discovery and inspection;
(b) enforcing the attendance of any person and examining him on oath;
(c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

Section 106 Procedure of Authority and Appellate Authority.

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure

Rule 103. Qualification and appointment of members of the Authority for AdvancecRuling.-

[The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.]

Rule 104. Form and manner of application to the Authority for Advance Ruling.-

(1)Anapplication for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in FORM GST ARA-01 and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.

(2) The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.

Rule 105. Certification of copies of advance rulings pronounced by the Authority.-

A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.

Rule 106. Form and manner of appeal to the Appellate Authority for Advance Ruling.-
(1)An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.

(2) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal.

(3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed,-

(a) in the case of the concerned officer or jurisdictional officer, by an officer authorized in writing by such officer; and

(b) in the case of an applicant, in the manner specified in rule 26.

Rule 107. Certification of copies of the advance rulings pronounced by the Appellate Authority. –

A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to-
(a) the applicant and the appellant;
(b) the concerned officer of central tax and State or Union territory tax;
(c) the jurisdictional officer of central tax and State or Union territory tax; and
(d) the Authority,

in accordance with the provisions of sub-section (4) of section 101 of the Act.

Rule 107A. Manual filing and processing.

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.]

Ch 19 Demand and Recovery

Relevance of Section 73 or 74

Section 49 (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 section 74.

Section 21. 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 section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of amount to be recovered.

Section 10 (5) If the proper officer has reasons to believe that a taxable person has paid tax under Composition scheme 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.

Section 35 Where the registered person fails to account for the goods or services or both in accordance with the Section 35 provisions, 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.

Section 61 (3) In case Scrutiny of Returns no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate actionas per law, or proceed to determine the tax and other dues under section 73 or section 74.

Section 65 (5) Where the audit conducted by Tax Authorities results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Section 104 Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period of section 73 or section 74.

Rule 36(3) of CGST Rule 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.

Section 73 Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts

(*1*) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (*1*) at least three months prior to the time limit specified in sub-section (*10*) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (*1*), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (*1*), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (*1*), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (*1*) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (*1*) or, as the case may be, the statement under sub-section (*3*), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (*1*) or, as the case may be, the statement under sub-section (*3*), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made there under.

(7) Where the proper officer is of the opinion that the amount paid under subsection (*5*) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (*1*) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (*1*) or sub-section (*3*) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (*9*) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (*6*) or sub-section (*8*), penalty under sub-section (*9*) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Section 74 Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or any Willful misstatement or suppression of facts.

(*1*) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (*1*) at least six months prior to the time limit specified in sub-section (*10*) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (*1*), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (*1*), on the person chargeable with tax.

(4) The service of statement under sub-section (*3*) shall be deemed to be service of notice under sub-section (*1*) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (*1*) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (*1*), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub section (*1*), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under subsection (*5*) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (*1*) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (*1*) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (*9*) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (*9*) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section,—
(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Section 75 General provisions relating to determination of tax.

(*1*) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (*2*) and (*10*) of section 73 or sub-sections (*2*) and (*10*) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (*1*) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (*1*) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (*10*) of section 73 or within five years as provided for in sub-section (*10*) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (*10*) of section 73 or sub-section (*10*) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Section 76 Tax collected but not paid to Government.

(*1*) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under subsection (*1*), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the

notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (*2*), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (*1*) shall in addition to paying the amount referred to in sub-section (*1*) or sub-section (*3*) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (*1*) or sub-section (*3*) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (*1*).

(10) Where any surplus is left after the adjustment under sub-section (*9*), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Section 77 Tax wrongfully collected and paid to Central Government or State Government.

(*1*) A registered person who has paid the Central tax and State tax or, as the case may be*,* the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(*2*) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be*,* the Central tax and the Union territory tax payable.

Section 78 Initiation of recovery proceedings.

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him

Section 79 Recovery of tax.

(*1*) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(c)
(*i*) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (*i*) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (*i*) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (*i*) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (*i*) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (*i*) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

(vii) where a person on whom a notice is served under sub-clause (*i*) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (*1*), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (*3*) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Explanation.—For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25

Section 80 Payment of tax and other amount in installments.

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

Section 81 Transfer of property to be void in certain cases.

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favor of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Section 82 Tax to be first charge on property.

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

Section 83 Provisional attachment to protect revenue in certain cases.

(*1*) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(*2*) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (*1*).

Section 84 Continuation and validation of certain recovery proceedings.

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as “Government dues”), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then—

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal, revision or in other proceedings––

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;
(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;
(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Rule 142. Of CGST Rule Notice and order for demand of amounts payable under the Act.-

(1) The proper officer shall serve, along with the
(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,
(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.
MAY 2020 AMENDMENTS

Rule 142 (1A) The proper officer shall, before service of notice to the person chargeable with tax, interest, and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC–04.

(3) Where the person chargeable with tax makes payment of tax and interest under sub-sec (8) of section 73 or, as the case may be, tax, interest and penalty under subsection (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC- 03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose

summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06***.***

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a Summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.]

Rule 142A. Procedure for recovery of dues under existing laws. –

(1) A summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in FORM GST DRC-07A electronically on the common portal for recovery under the Act and the demand of the order shall be posted in Part II of Electronic Liability Register in FORM GST PMT-01.

(2) Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in FORM GST DRC-08A and Part II of Electronic Liability Register in FORM GST PMT-01 shall be updated accordingly.]

Rule 143. Recovery by deduction from any money owed.-

Where any amount payable by a person (hereafter referred to in this rule as “the defaulter”) to the Government under any of the provisions of the Act or the rules made thereunder is not paid, the proper officer may require, in FORM GST DRC-09, a specified officer to deduct the amount from any money owing to such defaulter in accordance with the provisions of clause (a) of sub-section (1) of section 79.

Explanation.-For the purposes of this rule, “specified officer” shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

Rule 144. Recovery by sale of goods under the control of proper officer.-

(1) Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.

(2) The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC-10 clearly indicating the goods to be sold and the purpose of sale.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in FORM GST DRC- 11 requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in FORM GST DRC-12.

(6) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

Rule 145. Recovery from a third person.-

(1) The proper officer may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (hereafter referred to in this rule as “the third person”), a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice.

(2) Where the third person makes the payment of the amount specified in the notice issued under sub-rule (1), the proper officer shall issue a certificate in FORM GST DRC-14 to the third person clearly indicating the details of the liability so discharged.

Rule 146. Recovery through execution of a decree, etc.-

Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in FORM GST DRC- 15 to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

Rule 147. Recovery by sale of movable or immovable property.-

(1) The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale in FORM GST DRC- 16 prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due:

Provided that the attachment of any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any Court, shall be attached in the manner provided in rule 151.

(2) The proper officer shall send a copy of the order of attachment or distraint to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the proper officer to that effect.

(3) Where the property subject to the attachment or distraint under sub-rule (1) is-

(a) an immovable property, the order of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;

(b) a movable property, the proper officer shall seize the said property in accordance with the provisions of chapter XIV of the Act and the custody of the said property shall either be taken by the proper officer himself or an officer authorised by him.

(4) The property attached or distrained shall be sold through auction, including eauction, for which a notice shall be issued in FORM GST DRC- 17 clearly indicating the property to be sold and the purpose of sale.

(5) Notwithstanding anything contained in the provision of this Chapter, where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

(6) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders or, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(7) The last day for the submission of the bid or the date of the auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (4):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(8) Where any claim is preferred or any objection is raised with regard to the attachment or distraint of any property on the ground that such property is not liable to such attachment or distraint, the proper officer shall investigate the claim or objection and may postpone the sale for such time as he may deem fit.

(9) The person making the claim or objection must adduce evidence to show that on the date of the order issued under sub-rule (1) he had some interest in, or was in possession of, the property in question under attachment or distraint.

(10) Where, upon investigation, the proper officer is satisfied that, for the reason stated in the claim or objection, such property was not, on the said date, in the possession of the defaulter or of any other person on his behalf or that, being in the possession of the defaulter on the said date, it was in his possession, not on his own account or as his own property, but on account of or in trust for any other person, or partly on his own account and partly on account of some

other person, the proper officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or distraint.

(11) Where the proper officer is satisfied that the property was, on the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the proper officer shall reject the claim and proceed with the process of sale through auction.

(12) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of such notice and after the said payment is made, he shall issue a certificate in FORM GST DRC-12 specifying the details of the property, date of transfer, the details of the bidder and the amount paid and upon issuance of such certificate, the rights, title and interest in the property shall be deemed to be transferred to such bidder:

Provided that where the highest bid is made by more than one person and one of them is a co-owner of the property, he shall be deemed to be the successful bidder.

(13) Any amount, including stamp duty, tax or fee payable in respect of the transfer of the property specified in sub-rule (12), shall be paid to the Government by the person to whom the title in such property is transferred.

(14) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (4), the proper officer shall cancel the process of auction and release the goods.

(15) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

Rule 148. Prohibition against bidding or purchase by officer.-

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Rule 149. Prohibition against sale on holidays.-

No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

Rule 150. Assistance by police.-

The proper officer may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

Rule 151. Attachment of debts and shares, etc.-

(1) A debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any court shall be attached by a written order in FORM GST DRC-16 prohibiting.-

(a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;

(b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.

(3) A debtor, prohibited under clause (a) of sub-rule (1), may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

Rule 152. Attachment of property in custody of courts or Public Officer.

Where the property to be attached is in the custody of any court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

Rule 153. Attachment of interest in partnership.-

(1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

Rule 154. Disposal of proceeds of sale of goods and movable or immovable property.-

The amounts so realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,-
(a)first, be appropriated against the administrative cost of the recovery process
(b) next, be appropriated against the amount to be recovered;
(c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and
(d) any balance, be paid to the defaulter.

Rule 155. Recovery through land revenue authority.-

Where an amount is to be recovered in accordance with the provisions of clause (e) of sub-section (1) of section 79, the proper officer shall send a certificate to the Collector or Deputy Commissioner of the district or any other officer authorised in this behalf in FORM GST DRC-18 to recover from the person concerned, the amount specified in the certificate as if it were an arrear of land revenue.

Rule 156. Recovery through court.

Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f) of sub-section (1) of section 79 in

FORM GST DRC- 19 to recover from the person concerned, the amount specified thereunder as if it were a fine imposed by him.

Rule 157. Recovery from surety.

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

Rule 158. Payment of tax and other amounts in installments.-

(1) On an application filed electronically by a taxable person, in FORM GST DRC- 20, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments in accordance with the provisions of section 80, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.

(2) Upon consideration of the request of the taxable person and the report of the jurisdictional officer, the Commissioner may issue an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.

(3) The facility referred to in sub-rule (2) shall not be allowed where-

(a) the taxable person has already defaulted on the payment of any amount under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017, for which the recovery process is on;

(b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017;

(c) the amount for which instalment facility is sought is less than twenty–five thousand rupees.

Rule 159. Provisional attachment of property.

(1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.

(2) The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.

(3) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in FORM GST DRC-23, on proof of payment.

(4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.

(5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC- 23.

(6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in FORM GST DRC- 23.

Rule 160. Recovery from company in liquidation.

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.

Rule 161. Continuation of certain recovery proceedings.

The order for the reduction or enhancement of any demand under section 84 shall be issued in FORM GST DRC- 25.

Ch 20 Appeal and Revision

Some Definitions

Section 2 (99) “Revisional Authority” means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

Section 2 (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;

Section 2 (9) “Appellate Tribunal” means the Goods and Services Tax Appellate Tribunal constituted under section 109;

Section 2 (10) “appointed day” means the date on which the provisions of this Act shall come into force;

Section 2 (15) “authorized representative” means the representative as referred to in section 116;

Section 2 (16) “Board” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

Section107 Appeals to Appellate Authority

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<tr><td>Time Limit</td><td>3 Monthsfrom the date of communication of order</td></tr>
<tr><td>Certified Copy of Order appealed</td><td>A certified copy of the order appealed against shall be submitted within 7 days of filing of the appeal. Final acknowledgement with appeal number shall be issued by the Appellate Authority.</td></tr>
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<tr><td>Situation</td><td>Date of Filling of Appeal</td></tr>
<tr><td>Certified copy of the decision or order is submitted within 7 days from the date of filing</td><td>Date of issue of provisional acknowledgement.</td></tr>
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<tr><td>Pre-Deposit of Tax Dues</td><td>Appeal shall be filed Only if the appellant has paid –
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Appeal by Department- Appeal to Appellate Authority shall be made by Commissionery for the purpose of satisfying himself as to the legality or propriety of the said decision or order

Section107 (6) No appeal shall be filed under sub-section (1), unless the appellant has paid—
(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed

Procedures – Appeal before Commissioner (Appeals) / Appellate Authority (AA)

1. Opportunity of being heard shall be given to the Appellant.
2. For Additional Grounds of Appeal (or) Additional Evidences before commissioner (Appeals), the adjudicating Authority should be given opportunity of being heard.
3. Contents of the Order are –
   a) Points for determination,
   b) Decision, &
   c) Reasons for decision.
4. Time Limit : The AA may wherever possible hear and dispose the appeal, within 1 year from the date on which it is filed.
5. Order shall be communicated to –
   a) Appellant,
   b) Adjudicating Authority,
   c) Chief Commissioner,Commissioner.

<u>Power of AA</u>

1. The AA can –(To enable him to dispose the appeal)
   a) Conduct such enquiry as may be required,
   b) Direct the Appellant to produce any document, or
   c) Examine any witness
2. Time Limit : The AA may wherever possible hear and dispose the appeal, within 1 year from the date on which it is filed.
3. Appellate Authority can :
   a) Can pass an order, confirming, modifying, or annulling the decision or order appealed against.
   b) Appellate Authority can pass an order enhancing any fee, penalty or fine in lieu of confiscation after giving a reasonable opportunity to the Assessee before such order
      Note : Appellate Authority shall not refer the case back to the adjudicating authority.
4. Contents of the order : The order in writing, disposing an appeal shall state –
   a) The points for determination,
   b) The decision, and
   c) The reasons for the decision.
5. Summary Order : The Appellate Authority shall, along with its order u/s, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.
6. Communication of Order : The Commissioner (Appeals) / AA shall communicate the order passed by him to –
   a) Appellant,
   b) Respondent
   c) Adjudicating Authority,
   d) Jurisdictional Commissioner of CGST
   e) Jurisdictional Commissioner of SGST / UTGST
7. Binding Nature or Order : Every order passed by Appellate Authority u/s 107 shall, subject to the provisions of Sec.108/113/117/118 be final and binding on the parties.

Nov 2019 Amend-Section 107(6), Section 112(8) of the CGST Act and Section 20 of the IGST Act -Upper limits prescribed for pre-deposits for filing appeal to Appellate Authority and Appellate Tribunal

Amount of pre-deposit for filing an appeal to Appellate Authority cannot exceed Rs. 25 crore.

Similarly, a Amount of pre-deposit for filing an appeal to Appellate Tribunal cannot exceed Rs. 50 crore .

Section 20 of the IGST Act has also been amended to provide that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be Rs. 50 crore and Rs. 100 crore rupees respectively.

May 2019 Amend The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

Section 108 Power of Revisional Authority (RA)

1. Revision of Orders : Orders passed by its subordinate officers.
2. Stay of Decision or order :RA may stay the operation of such decision or order for such period as he deems fit on examination of the case records, when order passed under the CGST Act/SGST Act/UTGST Act is :
   i) Erroneous, in so far as it is prejudicial to the interest of the revenue, and
   ii) Is illegal or improper, or
   iii) Has not taken into account material facts.

3. RA Shall pass such order, including enhancing or modifying or annulling the said decision or order.
4. Every revision order shall be subject to further appeal to the Tribunal, High Court, or Supreme Court.
5. RA Shall not exercise the power of revision provided the conditions are satisfied

Nov 2019 Amend- 108 of the CGST Act Prior notice to person in case of adverse order by Revisional Authority
In case of adverse order by Revisional Authority, Prior notice and a reasonable opportunity of being heard must be given to affected person. Along with the order under section 108(1), the Revisional Authority will also issue a summary of the order clearly indicating the final amount of demand confirmed.

Section 109 Constitution of Appellate Tribunal and Benches thereof

1. Appellate Tribunal refers to the Goods and Service Tax Appellate Tribunal (GSTAT) constituted u/s 109(1) of the CGST Act, 2017
2. Constitution of GSTA : The law envisages the constitution of a two tier Tribunal :
   a) National Level and
   b) State level

Tier	Jurisdiction

National Bench / Regional Benches	If Place of Supply is one of the issues in dispute
State Bench / Area Benches	Issues other than Place of Supply

Sec 109 Constitution of Appellate Tribunal and Benches thereof.

(1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as “Regional Benches”), State Bench and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).

(3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

(6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council
Provided further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate

Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).

(8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.

(9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

(10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

(11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer—
(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or
(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

Sec 110 President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.- Not Relevant

Sec 111 Procedure before Appellate Tribunal

(1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
(e) issuing commissions for the examination of witnesses or documents;
(f) dismissing a representation for default or deciding it ex parte;
(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
(h) any other matter which may be prescribed.

(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—
(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973

Sec 112 Appeals to Appellate Tribunal
(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in subsection (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections

within forty-five days after the expiry of the period referred to in subsection (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid––
(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order subject to a maximum of fifty crore rupees, in relation to which the appeal has been filed.

Nov 2019 Amend-Section 107(6), Section 112(8) of the CGST Act and Section 20 of the IGST Act -Upper limits prescribed for pre-deposits for filing appeal to Appellate Authority and Appellate Tribunal
Amount of pre-deposit for filing an appeal to Appellate Authority cannot exceed Rs. 25 crore. Similarly, a Amount of pre-deposit for filing an appeal to Appellate Tribunal cannot exceed Rs. 50 crore .
Section 20 of the IGST Act has also been amended to provide that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be Rs. 50 crore and Rs. 100 crore rupees respectively.

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,—
(a) in an appeal for rectification of error or for any other purpose; or
(b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed

113 Orders of Appellate Tribunal

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for

reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.

(6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties

114 Financial and administrative powers of President.

The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President

115 Interest on refund of amount paid for admission of appeal.

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

116 Appearance by authorized representative.

(1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this Act, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—

(a) his relative or regular employee; or (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
(c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
(d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

(e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

(3) No person,—
(a) who has been dismissed or removed from Government service; or
(b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or
(c) who is found guilty of misconduct by the prescribed authority;
(d) who has been adjudged as an insolvent, shall be qualified to represent any person under sub-section (1)—

(i) for all times in case of persons referred to in clauses (a), (b) and (c); and
(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

117 Appeal to High Court

(1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which––
(a) has not been determined by the State Bench or Area Benches; or
(b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

118 Appeal to Supreme Court.

(1) An appeal shall lie to the Supreme Court—
(a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or
(b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

119 Sums due to be paid notwithstanding appeal, etc.

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under subsection (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

120 Appeal not to be filed in certain cases.

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under subsection (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under subsection (1).

121 Non appealable decisions and orders.

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—
(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
(b) an order pertaining to the seizure or retention of books of account, register and other documents; or
(c) an order sanctioning prosecution under this Act; or
(d) an order passed under section 80

Rule 109A of CGST Act Appointment of Appellate Authority.-
If the decision or order against which the appeal is to be filed, is passed by the Additional or Joint Commissioner then AA shall be Commissioner (Appeals)
(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -
(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner (b) [any officer not below the rank of Joint Commissioner (Appeals)]129 where such decision or order is passed by the Deputy or Assistant Commissioner or

Superintendent, within three months from the date on which the said decision or order is communicated to such person.

If the decision or order against which the appeal is to be filed, is passed by the Deputy or Assistant Commissioner or Superintendent then AA shall be Additional Commissioner (Appeals)

(2) An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –
(a) [any officer not below the rank of Joint Commissioner (Appeals)] where such decision or order is passed by the Additional or Joint Commissioner;
(b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent, within six months from the date of communication of the said decision or order.]

Ch 21 Refund under GST

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

Situation Leading to Refund Claims
A claim for refund may arise on account of any one of the following :
1. Export of goods or services
2. Supplies to SEZs units and developers
3. Deemed exports
4. Refund of taxes on purchase made by UN or embassies etc.
5. Refund arising on account of judgment, decree, order or direction of the AA, Tribunal or any court
6. Refund of accumulated Input Tax Credit on account of inverted duty structure
7. Finalization of provisional assessment
8. Refund of pre-deposit
9. Excess payment due to mistake
10. Refunds to International tourists of GST paid on goods
11. Refund on account of issuance of refund vouchers
12. Refund of CGST & SGST paid by for erroneous determination of place of Supply

Rule 86 (3) of CGST 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.

Rule 86 (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.

Sec.16 of IGST Act 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 to a SEZ Developer or a SEZ Unit.
2. ITC is Eligible irrespective of the fact that such supply may be an exempt supply.
3. Option to Registered Person :
a) He may effect supply under Bond or Letter of Undertaking (LUT), without payment of Integrated tax and claim refund of unutilised ITC or
b) He may effect, on payment of Integrated tax and claim refund of such Integrated tax paid
4. Refund Amount =
(Turnover of Zero – rated Supply of Goods + Turnover of Zero – rated Supply of Services) x Net ITC/ Adjusted Total Income

5. Provisional Refund : Proper Officer, on Provisional basis may refund 90% of the total amount claimed within a period not exceeding 7 days from the date of acknowledgement to the applicant.
6. Person claiming refund has, not been prosecuted for any offence under the CGST Act or under an existing law where the amount of tax evaded exceeds Rs.2,50,000 during any period of 5 years immediately preceding the tax period.
7. Final Settlement shall be made after due verification of documents.

Rule 89(5) Refund in case of Inverted Duty Structure Refund of ITC for Inverted Duty Structure : Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC / Adjusted Total Turnover} (-) Tax payable on such inverted rated supply of goods

Clarification in respect of goods sent/ taken out of India for exhibition or on consignment basis for export promotion MAY 2020 AMENDMENTS

a) Section 7 the activity of taking goods out of India on consignment basis for exhibition would **not in itself constitute a supply under GST since there is no consideration received at this time**. Even this supply is not covered under Schedule I i.e Deemed Supply without Consideration.

b) The movement of these goods out of India shall be accompanied by a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.

c) Since taking such goods out of India is not a supply, it necessarily follows that it is also not a zero-rated supply as per section 16 of the IGST Act. Therefore, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

d) The goods taken out of India in this manner are required to be either sold or brought back within a period of six months from the date of removal.

e) The supply would be deemed to have taken place if the goods are neither sold abroad nor brought back within the period of six months. In this case, **the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of the quantity of goods which have neither been sold nor brought back**. **The benefit of zero-rating, including refund, shall not be available in respect of such supplies.**

f) **If the specified goods are sold abroad, fully or partially, within the period of six months, the supply shall be held to have been effected, in respect of the quantity so sold, on the date of such sale. In this case, the sender shall issue a tax invoice in respect of such quantity of goods which has been sold**. These **supplies shall become zero-rated supplies** at the time of issuance of invoice. **However, refund in relation to such supplies shall be available only as refund of unutilized ITC and not as refund of IGST.**

g) **No tax invoice is required to be issued in respect of goods which are brought back to India within the period of six months**

Section 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 the 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 the return furnished under section 39 in such manner as may be prescribed.

(2) A specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, 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 six months 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 unutilised input tax credit at the end of any tax period:
Provided that no refund of unutilised 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 unutilised 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
(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 per cent. of the total amount so claimed, 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 subsection (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.
Nov 2019 Amend Rule 91 Grant of provisional refund read with Section 54
Provisional order issued under section 54(6) shall not be required to be revalidated by the proper officer. But, payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

(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 Export (Earlier Zero Rated Supply)of goods or services or both or on inputs or input services used in making such exports (Earlier Zero Rated Supply)

Nov 2019 Amendments -Section 54(8)(a) has been amended to provide that the principle of unjust enrichment will now apply in case of refund claim arising out of supplies of goods or services made to SEZ developer/unit.

(b) refund of unutilised 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;

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

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

(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed. MAY 2020 Amendments

(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 under 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 proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(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 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.

Nov 2019 Amend-Explanation 2 to section 54 of CGST Act -relevant date for claiming refund under section 54.

i) In 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, and the supply of services had been completed prior to the receipt of such payment Relevant Date is Date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reverse Bank of India .

ii) In case of refund of unutilised ITC on account of inverted duty structure Relevant date is Due date for furnishing of return under section 39 for the period in which such claim for refund arises

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 unutilised 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 goods themselves or, as the case may be, the inputs or input services used in such goods,––

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods
by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(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 or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) ~~in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;~~ 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.

2019 Nov Amend-Rule 89(5) of CGST Rules Relevant period for calculating refund on account of inverted duty structure
Relevant period means the period for which the claim has been filed.

Rule 89 Timing of application of Refund

For Export of Goods	Refund application shall be filed only after the export manifest or an export report, is delivered u/s 41 of the CUA
For SEZ OR SEZ Developer	After such goods have been admitted in full in the SEZ for authorized operations
For Supplies regarded as deemed exports	Application shall be filed by the recipient of deemed export supplies. Refund of any amount, after adjusting the tax payable out of the advance tax deposited
By specialised agency	Before expiry of 6 months from the last day of the quarter in which supply was received.

Documents required support Claim of Refund [Rule 89(2)]

Situation	Documents treated as Evidence
Pre Deposit of Tax u/s 107(6) or 112(8)	Reference number of the order and a copy of the order passed by the proper officer / appellate authority / Appellate Tribunal / Court resulting in refund or reference number of the payment of the pre deposit of tax
Refund on account of Export of Goods	A statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices.
Refund on account of Export of Services	Statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates
Refund on account of supply of goods to SEZ unit or SEZ developer	Statement containing the number and date of invoices along with declaration by recipient for non availment of ITC
Refund is on account of deemed exports	Statement containing the number and date of invoices along with such other evidence as may be notified
Refund on account of Unutilised ITC due to Inverted Duty structure (other than nil rated or fully exempt supplies)	Statement in Annex 1 of FORM GST RFD-01containing the number and date of invoices received and issued during a tax period.
Refund on account of finalisation of Provisional assessment	Reference number of the final assessment order and a copy of the said order
Refund u/s 77 for wrong collection and payment of tax to Central and State Government	A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply
Refund on account of excess payment of tax	Statement showing the details of the amount of claim
In case where the amount of refund claimed does not exceed Rs.2 Lacs (tax paid but incidence has not been passed on the to	Declaration for the claim and Certificate in Annex 2 of FORM GST RFD-01 Issued by a Chartered Accountant or a Cost Accountant to the effect of claim.

the other person)	

Nov 2019Amend -Declaration to the effect that tax has not been collected from SEZ unit/ developer is required for claiming refund
Rule 89(2) of CGST Rules provides documentary evidences to be accompanied with the application of refund. (f) clause providing that a declaration to the effect that tax has not been collected from SEZ unit/SEZ developer, is required as a documentary evidence, in case where the refund is on account of supply of goods or services or both made to SEZ unit/SEZ developer.
Note- Earlier declaration required was the SEZ unit/SEZ developer has not availed ITC of the tax paid by the supplier of goods or services or both.

2019 Nov Amend -Filing of departure manifest shall be deemed to be the application filed for refund of tax paid on export of goods. If person in charge of the conveyance carrying export of goods files a departure manifest18; then the application for refund of IGST paid on export of goods shall be deemed to have been filed

Section 55 Refund in certain cases.
The Government may, on the recommendations of the Council, by notification, specify 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, 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.

Specialized agencies notified under section 55 of CGST Act entitled to refund of IGST paid on import of goods Circular MAY 2020 AMENDMENTS

a.Section 55 of the CGST Act, 2017 provides a refund of taxes paid on the notified supplies of goods or services or both received by them. In pursuance of this provision, Notification No.16/2017 has been issued which inter-alia provides that United Nations or a specified international organisation shall be entitled to claim refund of central tax paid on the supplies of goods or services or both received by them subject to a certificate from UN or that specified international organisation that the goods and services have been used or are intended to be used for official use of the UN or the specified international organization.
A similar refund mechanism has been provided in respect of integrated tax vide notification and Union Territory tax .

b.Section 3 (7) of Customs Tariff Act, 1975 (CTA), provides for parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. In the case of UN and specialized agencies, the above referred to notifications envisage

payment and then refund of taxes paid. Therefore, on this principle of parity, specialized agencies ought to get the refund of the IGST paid on imported goods.
Accordingly, Board has decided that respective customs field formations shall provide a refund of IGST paid on import of goods by the specialized agencies notified by Central Government under Section 55 of CGST, Act, 2017.

Section 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 subsection

(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 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:

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).

Sec.15 of IGST Act Refund of Integrated Tax paid on supply of goods to International Tourist leaving India
1. Meaning of Tourist : For the purpose of this section 15 of IGST Act, the term “tourist” means, a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.
2. Refund of Tax shall be made in the prescribed manner.

Unjust Enrichment
1. No person shall be allowed to enrich himself at the expense or cost of another.
2. Benefit of Refund shall be allowed to the person who ultimately bears the burden of tax
3. Every person liable to pay duty is presumed to have passed on the duty to the buyer of such goods. The contrary should be provided by the Assessee.
4. When duty is passed on to Buyer, it is not practically possible to identify individual customers and pay refund to them. Such Refund is transferred to Consumer Welfare Fund.

5. Refund to Claimant, if he proves with documentary evidence that he has not passed on the incidence of duty to Buyer.

Section 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

Section 58 Utilisation of 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.

Rule 91of CGSR 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 sub-rule (1) is due to the applicant in accordance with the provisions of subsection (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 subrule (2) of rule 90:

[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 advice in FORM GST RFD-05 for the amount sanctioned under sub-rule (2) and the same shall be electronically credited toany of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund:

[Provided that the payment advice 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 payment advice was issued.
Nov 2019 Amend Rule 91 Grant of provisional refund read with Section 54
Provisional order issued under section 54(6) shall not be required to be revalidated by the proper officer. But, payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

Proper officer will now issue payment order instead of payment advice [Notification No. 31/2019] MAY 2020 AMENDMENTS

With effect from 24.09.2019 for refunds under GST, Proper officer will now issue payment order instead of payment advice. Accordingly, Rule 91(3), Rule 92(4), Rule 92(5), Rule 94 of the CGST Rules have been suitably modified and rule 91(4) and rule 92(4A) have been newly inserted.

Rule 92 of CGST Rule Order sanctioning refund.
Nov 2019 Amend Rule 92 Provisions relating to order sanctioning refund
where the proper officer is satisfied that the amount refundable under rule 92(1) or rule 92(2) is payable to the applicant under section 54(8), he shall make an order in prescribed form and issue a payment advice for the amount of refund 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.The order issued in prescribed form shall not be required to be revalidated by the proper officer but payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.
Proper officer will now issue payment order instead of payment advice [Notification No. 31/2019] MAY 2020 AMENDMENTS

With effect from 24.09.2019 for refunds under GST, Proper officer will now issue payment order instead of payment advice. Accordingly, Rule 91(3), Rule 92(4), Rule 92(5), Rule 94 of the CGST Rules have been suitably modified and rule 91(4) and rule 92(4A) have been newly inserted.

(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:

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.

(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 Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund.

(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-08to 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) 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 payment advice in FORM GST RFD-05 for the amount of refund 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:

[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 payment advice 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 payment advice was issued.]

(5) Where the proper officer is satisfied that the amount refundable under sub-rule (1) 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 an advice in FORM GST RFD- 05, for the amount of refund to be credited to the Consumer Welfare Fund.

Rule 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.

Rule 94. Order sanctioning interest on delayed refunds.
-Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along witha payment advice 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.
Proper officer will now issue payment order instead of payment advice [Notification No. 31/2019] MAY 2020 AMENDMENTS

With effect from 24.09.2019 for refunds under GST, Proper officer will now issue payment order instead of payment advice. Accordingly, Rule 91(3), Rule 92(4), Rule 92(5), Rule 94 of the CGST Rules have been suitably modified and rule 91(4) and rule 92(4A) have been newly inserted.

Rule 95. Refund of tax to certain persons.-
(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 [or otherwise]105, 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) 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]
(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.

(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.

Rule 96. Refund of integrated tax paid on goods [or services] exported out of India.-

(1) The shipping bill filed by [an exporter of goods]109 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
(a) departure manifest or]110 an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
(b) the applicant has furnished a valid return in FORM GSTR-3or FORM GSTR-3B, as the case may be;

(2) 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.

[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) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3or 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]113 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, 1962.

(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.

(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 B of FORM GST RFD-07.

(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 after passing an order in FORM GST RFD-06.

(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) 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]114

[[[(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

(a) received supplies on which the benefit of the Government of India notification No. 48/2017
(b) availed the benefit under notification No. 78/2017-Customs

Rule 96A Export of goods or services under bond or LUT

2019 Amend-Any registered person availing the option to supply services for export without payment of integrated tax shall furnish, prior to export, a bond or LUT, binding himself to pay tax due along with interest within period of 15 days after expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for exports, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by Reserve Bank of India. (Effect of section 2(6) of IGST Act Amendments).

(1) Any registered person availing the option to supply goods 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, 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[119, 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 [or in Indian rupees, wherever permitted by the Reserve Bank of India]120.

(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.

[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.

(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 zerorated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.";

Refund allowed to retail outlets established in the departure area of an international airport
VARIOUS CIRCULARS AND NOTIFICATION [MAY 2020 AMENDMENTS]

IGST Exemption	Supply of goods by a retail outlet established in the departure area of an international airport, beyond the immigration counters, to an outgoing international tourist i.e eligible passenger, is exempted from IGST
No IGST Collection and Refund on Inward Supply	Retail outlet will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund of applicable CGST+SGST/UTGST or IGST paid on inward supply of such goods
Refund eligibility	Retail outlet, registered under GST and holding a valid GSTIN, 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.
Refund Application	Retail outlet shall furnish the application for refund claim in prescribed form on a monthly/quarterly basis alongwith 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
Conditions for claiming refund	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 GSTIN 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.
Note-The “outgoing international tourist” or we can say “eligible passengers” shall mean a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non - immigrant purposes.	

Ch 22 Liabilities to pay Tax Dues in certain cases

Meaning “Tax Dues” = Any Tax + Interest + Penalty Payable under GST

Liability in case of	Person Liable
Transfer of Business	The taxable person and the person to whom the business is transferred shall, jointly and severally, be liable wholly or to the extent of transfer.
Amalgamation or Merger of Companies	If the order is to take effect from a date earlier to the date of the order and the amalgamated / merged companies have supplied or received any goods or services, such transactions shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax.
Company in liquidation	Liquidator of the Company [Receiver of any assets of a company]
Company in liquidation (Pvt Company)	If Tax dues cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such dues.
Directors of Private Company	If Tax dues cannot be recovered, then every person who was a director of the Private Company during such period shall, jointly and severally, be liable for the payment of such dues.
Partners of firm to pay tax	The firm and each of the partners of the firm shall, jointly and severally, be liable for such payment
Agency Business	Agent and his principal shall, jointly and severally, be liable to pay the tax.
Guardians, Trustees, etc	Tax dues shall be recoverable from guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such monor or other incapacitated person
Court of Wards, etc	Tax dues shall be levied upon and be recoverable from – (a) Court of Wards (b) The Administrator General (c) The Official Trustee or (d) Any receiver or manager appointed by or under any order of a court. It includes any person, who in fact manages the business.
Business carried on by deceased person is continued	Legal representative or other person who continues the business
Business carried on by decreased person is discontinued (whether	Legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, tax dues.

before or after this death)	

Nov 2019 Amend- Section 85(1) read with Section 93(1) of the CGST Act Liabilities in case transfer of business due to death of sole proprietor (Circular No. 96/15/2019)
Transferee/ successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of Transfer by way sale, gift, lease, leave and license, hire or in any other manner whatsoever "including transfer of business due to death of sole proprietor.

Ch 23 GST Inspection, Search and Seizure

Section 67 Power of inspection, search and seizure.

(*1*) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that––

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (*1*) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (*2*) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (*2*) shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (*2*) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (*2*) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (*2*) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under subsection (*2*), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (*8*), have been seized by a proper officer, or any officer authorised by him under sub-section (*2*), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (*5*) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of

the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier

68 Inspection of goods in movement

(*1*) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (*1*) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (*1*) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods

69 Power to arrest.

(*1*) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (*a*) or clause (*b*) or clause (*c*) or clause (*d*) of subsection (*1*) of section 132 which is punishable under clause (*i*) or (*ii*) of sub-section (*1*), or sub-section (*2*) of the said section, he may, by order, authorize any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (*1*) for an offence specified under subsection (*5*) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973,––

(a) where a person is arrested under sub-section (*1*) for any offence specified under sub-section (*4*) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

70 Power to summon persons to give evidence and produce documents

(*1*) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(*2*) Every such inquiry referred to in sub-section (*1*) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code.

Seizure of Documentations

a) Proper Officer may seize any documents or things which will be useful for any proceeding,

b)Person from whom documents are seized, can make copies thereof or take extract therefrom.

c)Seized Documents to be returned within 30 days of issue of SCN or date of expiry of period for SCN·

d)Presumptions as to Documents: (a) Contents are True, (b) Signature / Handwriting of the person belong to the person to whom it, Purports, (c) Signature / Handwriting of the person belong to the person to whom it purports, (Documents duly executed/attested.

e)Evidence in electronic form admissible in proceeding (Microfilm, Facsimile, Computer Printouts).

Section 71 Access to business premises

(*1*) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (*1*) shall, on demand, make available to the officer authorised under sub-section (*1*) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—
(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
(ii) trial balance or its equivalent;
(iii) statements of annual financial accounts, duly audited, wherever required;
(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
(vi) any other relevant record,
for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered

accountant or cost accountant.

Situation to Conduct of Inspection

Circumstances for Inspection When proper Officer, (not below the rank of JC), has reasons to believe that -

a) A taxable person has:

- Suppressed any transaction, or the stock of goods in hand
- Claimed ITC in excess of his entitlement or
- Has indulged in contravention of COST Act to evade tax

b) Person engaged in the transporting goods or an owner or operator of a warehouse or a godown or any other places:

- has kept goods which have escaped payment of tax,
- Has kept his account or goods in such a manner as is likely to cause tax evasion

2. Authorization for inspection shall be given by Proper Officer.
3. Access to Business Premises [Sec.71]: For carrying out any audit, scrutiny, verification and check, any Officer, (not below the rank of JC) shall have access to any places of business of a registered person to -(a) Inspect books of accounts (b) Any Documents (of Computers, Computer Programs, Computer Software whether installed in a Computer or otherwise (d) Such other things as may be required by the officer,

4. Documents for verification shall be made available within 15 working days from the date of demand.

Redemption Fine

The person from whom the goods were confiscated, can get back the goods by

paying a redemption Fine

Option Given by: Adjudicating Authority, Option Given to Owner of the Goods,

Fine and Penalty

- Minimum Fine: Penalty leviable u/s 129 of COST Act
- Maximum Fine: Market value of goods confiscated.

Punishments [Sec. 131]: Confiscation or imposition will not be a bar for punishment under

(a)Other Provision of the Act, or

(b)Any other law.

Disposal of Confiscated Goods [Sec.130(7)]: Confiscated goods, shall be sold' destroyed or othewise disposed of in the manner directed by the commissioner

Section 72 Officers to assist proper officers.

(*1*) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.
(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

Nov 2019 Amend- Section 129 of the CGST Act Detention, Seizure, Release of Goods/ Conveyances in Transit

Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in section 129(1) within **14 days (Earlier 7)** of such detention or seizure. If amount of tax and penalty as provided in section 129(1) is not paid within 14 days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.

Nov 2019 Amend -Who will be considered as the owner of the goods for the purposes of section 129(1) of the CGST Act

A)If the invoice or any other specified document is accompanying the consignment of goods, then Either the consignor or the consignee should be deemed to be the owner.
B) If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of goods.

Section 130 Confiscation of goods or conveyances and levy of penalty.

(*1*) Notwithstanding anything contained in this Act, if any person—
(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
(ii) does not account for any goods on which he is liable to pay tax under this Act; or
(iii) supplies any goods liable to tax under this Act without having applied for registration; or
(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (*1*) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (*2*), the owner of such goods or conveyance or the person referred to in subsection (*1*), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Miscellaneous Topics

Section 171. Anti-profiteering

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

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

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

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

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

Time period of 2 months for examination of an application, can be extended up to a further period of 1 month

With respect to anti-profiteering provisions prescribed under rules 128, 129, 132, 133 & 137 of the CGST Rules, The Specified Period of 2 months can now be extended up to a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority.

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

(1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority, in such form and manner as may	(2) All applications from interested parties on issues of local nature or those forwarded by the Standing Committee shall first be examined by the State level Screening Committee and the Screening Committee shall, within two months

be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices	from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

DGAP has to complete the investigation within a period of 6 months of the receipt of the reference from the Standing Committee which is further extendable up to 3 months

Rule 129. Initiation and conduct of proceedings.-

(1)Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation.

(2) The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

(3) The Director General of Anti-profiteering shall, before initiation of the investigation, issue a notice to the interested parties containing, inter alia, information on the following, namely:-

(a) The description of the goods or services in respect of which the proceedings have been initiated

(b) Summary of the statement of facts on which the allegations are based; and

(c) The time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

(4) The Director General of Anti-profiteering may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.

(5) The Director General of Anti-profiteering shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(6) The Director General of Anti-profiteering shall complete the investigation within a period of six months (Earlier 3 months) of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing [as may be allowed by the Authority]213 and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

In addition to DGAP, the Authority has also been empowered to summon any person

Rule 132. Power to summon persons to give evidence and produce documents.-

(1)The Authority, Director General of Anti-profiteering , or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 .

(2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code .

133. Order of the Authority.-

Time limit for passing the order by the Authority increased to 6 months

(1) The Authority shall, within a period of 6 months (Earlier 3 Months] from the date of the receipt of the report from the DGAP determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

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

Authority can seek a clarification from DGAP on the Investigation report

(2A) The Authority may seek the clarification, if any, from the DGAP on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1).

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

(a) Reduction in prices;

(b) Return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18%. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

Profiteered amount to be deposited in Consumer Welfare Fund along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount

(c) The deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest at the rate of 18 % from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted under section 57 and the remaining 50 % of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

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

(e) Cancellation of registration under the Act.

Expression "concerned State" means the State or Union Territory in respect of which the Authority passes an order

Explanation: For the purpose of this sub-rule, the expression, —concerned State means the State or Union Territory in respect of which the Authority passes an order.

(4) If the report of the DGAP referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the DGAP to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

A new sub-rule (5) Investigation of matter other than those covered in report of DGAP

(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the DGAP referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in subrule (1), direct the DGAP to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(5) (b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

Rule 137. Tenure of Authority-<u>Tenure of Authority extended from 2 years to 4 years</u>

National Anti-profiteering Authority constituted under rule 122 , shall cease to exist after the expiry of 4 YEARS (Earlier 2 years) from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Abhinav Jha CA Magical Videos

PART B

Custom & FTP

Summary Notes

For

May/Nov 2020 Exam

Ch 1 Basic Concepts under Custom

SECTION 12. Dutiable goods. –

(1) Except as otherwise provided in this Act, or any other law fo the time being in force, duties of customs shall be levied at such rates as may be specified under 1 [the Customs Tariff Act, 1975 (or any other law for the time being in for on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Governments they apply in respect of goods not belonging to Government.

Definition

Section 2(2) Assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force, with reference to—
(a) The tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act
(b) The value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act
(c) Exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force
(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods
(e) The origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made there under, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods
(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil

(3) "Baggage" includes unaccompanied baggage but does not include motor vehicles

(3A) "beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported

(7) "coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another;

(9) "Conveyance" includes a vessel, an aircraft and a vehicle

(14) "Dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid

(18) "Export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
Rajindra Dyeing & Printing Mills Ltd. 2005 – S.C.
Facts :Rajindra Dyeing & Printing Mills Ltd. Were manufacturers of readymade garments. They exported certain goods and filed shipping bill. The goods were examined by the customs authorities and loaded onto the ship. While it was within the territorial water, the ship sank. The cargo of assesse was destroyed.
Issue: The assesse filed their claim for duty drawback in relation to the goods which were destroyed. Whether their claim is valid.
Court Decision: Their claim was rejected on the grounds that the goods had not crossed the territorial waters and hence no export has taken place.

(19) "Export goods" means any goods which are to be taken out of India to a place outside India;

(20) "Exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter;

(22) "Goods" includes -

(a) Vessels, aircrafts and vehicles;

(b) Stores;

(c) Baggage;

(d) Currency and negotiable instruments; and

(e) Any other kind of movable property;

(23) "Import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(25) "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

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;

(27) "India" includes the territorial waters of India
Case Laws
Apar Pvt. Ltd and Garden Silk Mills Ltd.
Importation Commence: When goods crosses territorial water of India, Continue & Completed When it become part of mass of goods of country, and Taxable Event reach when goods reached to customs barriers and Bill of Entry for Home Consumption is filed.
Rajendra Dyeing & Printing Mills Ltd
'Export' occurs only when the goods crossed beyond the territorial water of India

(28) "Indian customs waters" means the [7] [waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river .

(38) "Stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting

(42) "Vehicle" means conveyance of any kind used on land and includes a railway vehicle

.

Ch 2 Import and Export Procedure

Section 8 Berthing place.

Power to approve landing places and specify limits of customs area.The [Principal Commissioner of Customs or Commissioner of Customs] may, -

(a) Approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;

(b) Specify the limits of any customs area

Section 10. Appointment of boarding stations. –

The [Principal Commissioner of Customs or Commissioner of Customs] may, by notification in the Official Gazette, appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.

Section 2 (31) "person-in-charge" means, -

(a) in relation to a vessel, the master of the vessel;

(b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance

Section 2 (13) "customs station" means any customs port, [customs airport, international courier terminal, foreign post office] or land customs station

Prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force, But does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Section 2(12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port [15][, and includes a place appointed under clause (aa) of that section to be an inland container depot];

Section 2 (13) "customs station" means any customs port, [16][customs airport, international courier terminal, foreign post office] or land customs station;

Section 2 (14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;

Section 2 (10) "customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport [and includes a place appointed under clause (aa) of that section to be an air freight station];

Section 2(29) "land customs station" means any place appointed under clause (b) of section 7 to be a land customs station

Section 2 [(20A) “foreign post office” means any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office.

Section 2(28A) “international courier terminal” means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal

Inland Container Depot

1. It is extended part of Customs port with in depended existence appointed by CBEC. [Normally situated at a place where sea shore is not available.]
2. It is created for loading & unloading of imported goods & Export goods.
3. All formalities of Customs like manifest, Bill of Entry are made available at ICD.

Container Freight Station
1. It is an extension of the primary Port
2. They are set up with the main objective of decongesting the Ports, where only a part of the Customs process mainly with examination of goods is carried out by the Customs.
3. Processing of Import Manifest, Export Manifest, Bill of Entry etc.are not carried out at CFS(these functions are carried at Main Port)

Appointment of Custom area by various authorities
1.By CBIC
Port, Airport & Land custom station [Sec 7]
Costal Port [Sec 7]
ICD, CFS, AFS [Sec 7]
Foreign Post Office
International Courier terminal
2. Principle Commissioner or Commissioner
Berth Place [Loading or unloading of goods at Custom port/ Air port / Costal Port]
Boarding Station
Public Warehouse
Private Warehouse
Special Warehouse

Import Procedure under Custom

SECTION 29. Arrival of vessels and aircrafts in India.
(1) The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land –

(a) For the first time after arrival in India; or
(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft; at any place other than a customs port or a customs airport, as the case may be 1[unless permitted by the Board].
(2) The provisions of sub-section (1) shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft –
(a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft;
(b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and
(c) shall comply with any directions given by any such officer with respect to any such goods, and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft :

Provided that nothing in this section shall prohibit the departure of any crew or passengers from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property

SECTION 30. Delivery of arrival manifest / import manifest or import report.-

(1) The person-in-charge of - (i) a vessel; or (ii) an aircraft; or (iii) a vehicle, carrying imported goods 4[or export goods] or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer [an arrival manifest or import manifest] by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the such form and manner as may be prescribed and if the [arrival manifest or import manifest] or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees:] 7[Provided that the 8[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to deliver [arrival manifest or import manifest] by presenting electronically, allow the same to be delivered in any other manner.]

(2) The person delivering the [arrival manifest or import manifest] or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents. (3) If the proper officer is satisfied that the [arrival manifest or import manifest] or import report is in any way

incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented.

May 2019 Amendments - SECTION 30: DELIVERY OF ARRIVAL MANIFEST OR IMPORT MANIFEST OR IMPORT REPORT

SECTION 30A. Passenger and crew arrival manifest and passenger name record information –
(1) The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer— (i) the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and (ii) the passenger name record information of arriving passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other person referred to in sub-section (1) shall be liable to such penalty, not exceeding fifty thousand rupees, as may be prescribed.]

SECTION 31. Imported goods not to be unloaded from vessel until entry inwards granted –
(1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.
(2) No order under sub-section (1) shall be given until an 2[arrival manifest or import manifest] has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.
(3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

SECTION 32. Imported goods not to be unloaded unless mentioned in 2[arrival manifest or import manifest] or import report –
No imported goods required to be mentioned under the regulations in an 2[arrival manifest or import manifest] or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

SECTION 33. Unloading and loading of goods at approved places only –
Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

SECTION 34. Goods not to be unloaded or loaded except under supervision of customs officer – Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer: Provided that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

SECTION 35. Restrictions on goods being water-borne.-
No imported goods shall be water-borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form: Provided that the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

SECTION 36. Restrictions on unloading and loading of goods on holidays, etc. –
No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any: Provided that no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

SECTION 45. Restrictions on custody and removal of imported goods. –

(1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the [Principal Commissioner of Customs or Commissioner of Customs] until they are cleared for home consumption or are warehoused or are transshipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force, - (a) shall keep a record of such goods and send a copy thereof to the proper officer; (b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed .

[(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an 4[arrival manifest or import manifest] or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.

SECTION 46. Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting 5[electronically] 6[on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing 7[in such form and manner as may be prescribed] : 8[Provided that the 1[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically 6[on the customs automated system] , allow an entry to be presented in any other manner: Provided further that] if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

[(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented 10[at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India: Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.]

(4) The importer while presenting a bill of entry shall 11[* * *] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, 12[and such other documents relating to the imported goods as may be prescribed].

[(4A) The importer who presents a bill of entry shall ensure the following, namely:— (a) the accuracy and completeness of the information given therein; (b) the authenticity and validity of any document supporting it; and (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

May 2019 Amendments- DECLARATION /VERIFICATION: The importer while presenting a bill of entry shall-

(a) make and subscribe to a declaration as to the truth of contents of such bill of entry and
(b) shall, in support of such declaration, produce to proper officer [i.e., “Superintendent/ Appraiser” or higher authority] the invoice, if any, and such other documents relating to the

imported goods as may be prescribed.

May 2019 Amendments-THE IMPORTER WHO PRESENT A BILL OF ENTRY SHALL ENSURE THE FOLLOWING, NAMELY:
(a) The accuracy and completeness of the information given therein
(b) The authenticity and validity of any document supporting it; and
(c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force

SECTION 47. Clearance of goods for home consumption. –

(1)] Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

(May 2019 Amendment- Provided that such order may also be made electronically through the customs automate system on the basis of risk evaluation through appropriate selection criteria.)
Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

[The importer shall pay the import duty— (a) on the date of presentation of the bill of entry in the case of self assessment; or (b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or (c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.]

[Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that] where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section :]

[Provided also that] if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.]

Sec 47 related- Clear first-Pay later (Deferred Payment)
Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).

Goods corresponding to bill of entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1st day to 15th day of any month	16th day of that month
16th day till the last day of any month other than March	1st day of the following month
16th day till the 31st day of March	31st March

SECTION 48. Procedure in case of goods not cleared, warehoused, or transhipped within [thirty days] after unloading. –
If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transshipped [within [thirty days]] from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof :
Provided that - (a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time; (b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.
Explanation. - In this section, "arms" and "ammunition" have the meanings respectively assigned to them in the Arms Act, 1959

SECTION 49. Storage of imported goods in warehouse pending clearance or removal.
Where,— (a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time; (b) in the case of any imported dutiable goods, entered for warehousing, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time, the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding thirty days:
Provided that the provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse under this section: Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time.] Clearance of export goods
Three Case of Warehousing without warehousing

Particular	Proviso to 46(1)	Section 49	Section 85
Goods Type	Generally only	Any Imported Goods,	Imported Goods

	Dutiable Imported Goods.	whether Dutiable or not	supplied as stores
Application/ Declaration by Importer	That he is unable to furnish all particulars of goods u/s 46(1) (for B/E), for want to information	That the goods cannot be cleared within a reasonable time	That the goods are to be supplied as "Stores" to Vessels or Aircraft
Deposit Place	Public Warehouse only	Public Warehouse only	Not Specified

SECTION 53. Transit of certain goods without payment of duty. –

Subject to the provisions of section 11, where any goods imported in a conveyance and mentioned in the 2[arrival manifest or import manifest] or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.]

SECTION 54. Transshipment of certain goods without payment of duty.

(1) Where any goods imported into a customs station are intended for transhipment, a bill of transshipment shall be presented to the proper officer in 4[such form and manner as may be prescribed]: 5[Provided that where the goods are being transshipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in 4[such form and manner as may be prescribed]. (2) Subject to the provisions of section 11, where any goods imported into a customs station are mentioned in the 2[arrival manifest or import manifest] or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transshipped without payment of duty. (3) Where any goods imported into a customs station are mentioned in the [arrival manifest or import manifest] or the import report, as the case may be, as for transshipment - (a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or (b) to any other customs station and the proper officer is satisfied that the goods are bona fide intended for transshipment to such customs station, the proper officer may allow the goods to be transshipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.]

SECTION 55. Liability of duty on goods transited under section 53 or transshipped under section 54. –
Where any goods are allowed to be transited under section 53 or transshipped under sub-section (3) of section 54 to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.

SECTION 56. Transport of certain classes of goods subject to prescribed conditions. –
Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.

Export Procedure under Custom

SECTION 50. Entry of goods for exportation.
(1) The exporter of any goods shall make entry thereof by presenting 26[electronically] 27[on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as maybe prescribed].
[Provided that the 1[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically 27[on the customs automated system], allow an entry to be presented in any other manner.]

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall 30[* * *] make and subscribe to a declaration as to the truth of its contents. 31[“

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:— (a) the accuracy and completeness of the information given therein; (b) the authenticity and validity of any document supporting it; and (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.”.]

SECTION 51. Clearance of goods for exportation. –

[(1)]Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation:

[Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

(May 2019 Amendments- Provided that such order may also be made electronically through the customs automate system on the basis of risk evaluation through appropriate selection criteria.)
Provided further that] the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.]

[(2)Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below five per cent and not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette.]

SECTION 51A. Payment of duty, interest, penalty, etc.- May 2019 Amendments -Newly inserted

(1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorized mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.

(2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made there under in such manner and subject to such conditions and within such time as may be prescribed.

(3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

(4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.]

SECTION 39. Export goods not to be loaded on vessel until entry-outwards granted. –

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

SECTION 40. Export goods not to be loaded unless duly passed by proper officer- The person-in-charge of a conveyance shall not permit the loading at a customs station – (a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter; (b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

SECTION 41. Delivery of 10[departure manifest or export manifest or export report] - (1) The person-in-charge of a conveyance carrying export goods 11[or imported goods] shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an [departure manifest or export manifest or export report] by presenting electronically], and in the case of a vehicle, an export report, in [such form and manner as may be prescribed and in case, the person-in-charge fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge shall be liable to pay penalty not exceeding fifty thousand rupees]:

[Provided that the 8[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to deliver the 10[departure manifest or export manifest or export report] by presenting electronically, allow the same to be delivered in any other manner.]

(2) The person delivering the [departure manifest or export manifest or export report] shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the 10[departure manifest or export manifest or export report] is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

SECTION 41A. Passenger and crew departure manifest and passenger name record information.

(1) The person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer— (i) the passenger and crew departure manifest; and (ii) the passenger name record information of departing passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Where the passenger and crew departure manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-incharge or the other person referred to in sub-section (1) shall be liable to such penalty, not exceeding fifty thousand rupees, as may be prescribed.]

SECTION 42. No conveyance to leave without written order –

(1) The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until –

(a) the person-in-charge of the conveyance has answered the questions put to him under section 38;

(b) the provisions of section 41 have been complied with;

(c) the shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;

(d) all duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(e) the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, - (i) such goods have been unloaded, or (ii) where the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India

Ch-3 Assessment.

SECTION 15. Date for determination of rate of duty and tariff valuation of imported goods. –

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) In the case of goods entered for home consumption under section 46, on the date on which [a bill of entry in respect of such goods is presented under that section];

(b) In the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty : 7 [Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft 8[or the vehicle] by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post

Explanation to Section 14

(a) "rate of exchange" means the rate of exchange - (i) determined by the Board, or (ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and ''Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999

DATE FOR DETERMINATION OF FOREIGN EXCHANGE RATE
If goods entered for home consumption
a) BOE presented after entry inward relevant date for duty under sec 15 & 16 shall be Date of Presentation of B/E
b) B/E presented before entry inward relevant date for duty under sec 15 & 16 shall be Date of granting
Inward order

Note- For (a) and (b) above relevant date for foreign exchange rate under proviso to Sec 14(1) is Date of presentation of BOE

If goods cleared from a warehouse- relevant date for duty under sec 15 & 16 shall be Date of Ex-bond B/E and date for foreign exchange rate under proviso to Sec 14(1) is Into Bond B/E

If goods entered for export under section 50

Relevant date for duty under sec 15 & 16 shall be Date of Let Export Order and date for foreign exchange rate under proviso to Sec 14(1) is Date of Shipping Bill

SECTION 16. Date for determination of rate of duty and tariff valuation of export goods.-

[(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51;

(b) in the case of any other goods, on the date of payment of duty.] (2)The provisions of this section shall not apply to baggage and goods exported by post.

SECTION 17. self-assess Assessment of duty. –

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the 12[the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary. 13[Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.] 14[

(3) For 15[the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 16[***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be. 17[***]

Explanation.- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received

SECTION 18. Provisional assessment of duty-

(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 19[and section 50],-
(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or
(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.]
(e) Audit related clause – Now deleted

(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.]

(2) When the duty leviable on such goods is assessed finally 21[or reassessed by the proper officer] in accordance with the provisions of this Act, then –
(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty 22[finally assessed or re-assessed, as the case may be,] and if the amount so paid falls short of, or is in excess of 23 [the duty 24[finally assessed or re-assessed, as the case may be,]], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;
(b) in the case of warehoused goods, the proper officer may, where the duty 25[finally assessed or re-assessed, as the case may be,] is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty. 26[

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order 27[or re-assessment order] under sub-section (2), at the rate fixed by the Central Government under section 28[28AA]

from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.]

(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that subsection within three months from the date of assessment, of duty finally 30[or re-assessment of duty, as the case may be,] there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.]

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to
(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
(d) the export duty as specified in section 26;
(e) drawback of duty payable under sections 74 and 75.

Nov 2019 Amendments –
Customs (Finalization of Provisional Assessment) Regulations, 2018.
1. Short title and commencement. – (1) These regulations may be called the Customs (Finalisation of Provisional Assessment) Regulations, 2018. (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

3.Application. – These regulations shall apply to the provisional assessments ordered on and after the enforcement of these regulations.

4. Time-limit and manner for submission of documents or information for the purpose of finalisation of provisional assessment. –

(1)Where a provisional assessment is ordered by the proper officer for the reasons that, -

(a) the necessary documents have not been produced or information has not been furnished by the importer or the exporter; or

(b) the proper officer requires the importer or the exporter to produce any additional documents or information, then such information or documents shall be made available by the importer or the exporter within 1 month from the date of such order of provisional assessment or the date of such requisition by the proper officer, as the case may be.

(2) The proper officer shall within 15 days from the date of such order of provisional assessment, inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced.

(3) The proper officer may, for reasons to be recorded in writing, allow a further period not exceeding 3 months, on his own or at the request of the importer or the exporter, in case the documents or information are not made available within the time period specified in sub-regulation (1).

(4) The Additional Commissioner or Joint Commissioner of Customs, may further extend the time period referred for another 3 months, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within the period as allowed above by the proper officer.

(5) The Commissioner of Customs, may extend the time period further as deemed fit, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available even after the extension of time under sub-regulation (4).

(6) The documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer may be submitted in one instance.

(7) The importer or the exporter or his authorised representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.

(8) For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment.

5.Time-limit for finalization of provisional assessment. –

(1) The proper officer shall finalize the provisional assessment within 2 months of receipt of: (a) an intimation from the importer or the exporter or his authorized representative or Customs Broker under sub-regulation (7) of regulation 4; or

(b) a chemical or other test report, where the provisional assessment was ordered for that reason; or

(c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

Provided that where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of 2 months shall be reckoned from the date of last intimation referred to in clause (a)above,:

Provided further that where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed under sub-regulations (3), (4) or (5) of regulation 4, as the case may be, the proper officer shall proceed to finalise the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

(2)The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of 3 months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months as specified in subregulation (1) above.

(3) This regulation shall not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.

6. Manner of finalization of provisional assessment. –

(1) The provisional assessment shall be finalised as per the provisions of section 18 of the Act.

Provided that if the amount so paid at the time of provisional assessment or after adjustment under clause (a) to sub-section (2) of section 18 of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the shortfall shall be adjusted from the security, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter,:

Provided further that, if the amount so adjusted or paid falls short of the duty finally assessed or re-assessed, as the case may be, the importer or exporter of the goods shall pay the shortfall in terms of the provisions of section 18.

(2) The Bond executed at the time of provisional assessment with security, if any, shall be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.

(3) Where the final assessment is contrary to the provisional assessment, the proper officer shall pass a speaking order following principles of natural justice.

(4) Where the final assessment confirms the provisional assessment, the proper officer shall finalize the same after ascertaining the acceptance of such finalization from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalization

(5) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer shall finalize the

provisional assessment on the system also consequent to the procedure prescribed in these regulations.

7. Penalty. - If any importer or exporter or his authorized representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend toRs.50000.

Project Imports

Eligible Projects CTA1975 (heading no. 98.01)

►Industrial plants
► Power projects
►Project for oil or mineral exploration
► Irrigation projects
►Mining projects
► Other project as specified by C.G.

a)Where an Industrial or similar project is going to be installed or commissioned or an existing unit is planned to expand, for its initial setting up, a numbers of different machineries, raw material, components, auxiliary equipments, spares etc. are required all these items are classifiable under different heading,
b) It involve different duty for different items and careful scrutiny of each and every item for assessment, this leads to delay in clearance and certain amount of hardship over importers.
c) Thus to alleviate the same and streamline the process of assessment, new tariff heading with a flat rate was framed to cover all project imports under .

SECTION 19. Determination of duty where goods consist of articles liable to different rates of duty.-
Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows :-
(a) Articles liable to duty with reference to quantity shall be chargeable to that duty;
(b) Articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
(c) Articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):

Provided that, - (a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article; (b) if the importer produces evidence to the satisfaction of the proper officer 31[or the evidence is available] regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Ch 4 Types of Duties under Custom Law

THE CUSTOMS TARIFF ACT, 1975

SECTION 1. Short title, extent and commencement.

(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.

SECTION 2. Duties specified in the Schedules to be levied. –

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

SECTION 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges.

SECTION 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges

(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article :

Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Explanation. — In this sub-section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its

sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent of the value of the imported article as specified in that notification.

Explanation. — In this sub-section, the expression “sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India” means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may be, such charge.

(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8). or Sub Section (8A), as the case may be.

(8) Valuation for above
For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962,
be the aggregate of—
(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (BCD),
And any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

ACD 3(7) = IGST
1) ACD 3(7) = IGST
2) It is leviable to counter balance that effects of GST payable on supply of like goods in India. It is payable as IGST as per section 5 of IGST Act.
3) It is leviable on all goods except the goods as mentioned in ACD3(1)
4) Determination of duty IGST is payable @0%, 5%, 12%, 18%, 23%or any other rate notified by CG on recommendation by council which should not exceeds 40%
5) Transaction value Value for IGST (i.eACD3(7)) =

Assessable value u/s 14(1)

(+)BCD XX
(+)Social welfare surcharge @10% XX
(+)NCCD XX
(+)protective duty/safeguard duty/ CVD on subside Article/anti dumping duty

(8A) ACD on Warehouse Sale before clearance
Where the goods deposited in a warehouse are sold to any person before clearance for home consumption or export the value of such goods under subsection (7) shall be,—
(a) where the whole of the goods are sold-, the value determined under sub-section (8) or the transaction value of such goods, whichever is higher; OR
(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher:

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).

Explanation.— For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.
(9) Countervail levy of GST Compensation Cess

Any article which is imported into India shall, in addition,be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) or sub-section (10A), as the case may be.

(10)Valuation for ACD 3(7)
For the purposes of calculating the goods and services tax compensation cess under subsection(9) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of
(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
(b) Any duty of customs chargeable on that article under section 12 of the Customs Act, 1962,(BCD) and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs,

but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

(10A) ACD on Warehouse Sale before clearance

Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the goods and services tax compensation cess under sub-section (9) shall be,—
(a) where the whole of the goods are sold, the value determined under sub-section (10) or the transaction value of such goods, whichever is higher; OR
(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (10) or the transaction value of such goods, whichever is higher:

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last of such transaction shall be the transaction value for the purposes of clause (a) or clause(b):

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (10).

Explanation.—For the purposes of this sub-section, the expression “transaction value”, in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.

SECTION 4. Levy of duty where standard rate and preferential rate are specified.

(1) Where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, or is admissible by virtue of a notification under Section 25 of the Customs Act, 1962 (52 of 1962), the duty to be levied and collected shall be at the standard rate, unless the owner of the article claims at the time of importation that it is chargeable with a preferential rate of duty, being the produce or manufacture of such preferential area as is notified under sub-section (3) and the article is determined, in accordance with the rules made under sub-section (2), to be such produce or manufacture.

(2)The Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of any preferential areas.

(3) For the purposes of this section and the First Schedule, preferential area means any country or territory which the Central Government may, by notification in the Official Gazette, declare to be such area.

(4) Notwithstanding anything contained in sub-section (1), where the Central Government is satisfied that, in the interests of trade including promotion of exports, it is necessary to take immediate action for discontinuing the preferential rate, or increasing the preferential rate to a rate not exceeding the standard rate, or decreasing the preferential rate, in respect of an article specified in the First Schedule, the Central Government may, by notification in the Official Gazette, direct an amendment of the said Schedule to be made so as to provide for such discontinuance of, or increase or decrease, as the case may be, in the preferential rate.

(5) Every notification issued under sub-section (3) or sub-section (4) shall, as soon as may be after it is issued, be laid before each House of Parliament.

SECTION 5. Levy of a lower rate of duty under a trade agreement.

(1) Whereunder a trade agreement between the Government of India and the Government of a foreign country or territory, duty at a rate lower than that specified in the First Schedule is to be charged on articles which are the produce or manufacture of such foreign country or territory, the Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of such foreign country or territory and for requiring the owner to make a claim at the time of importation, supported by such evidence as may be prescribed in the said rules, for assessment at the appropriate lower rate under such agreement.

(2) If any question arises whether any trade agreement applies to any country or territory, or whether it has ceased to apply to India or any foreign country or territory, it shall be referred to the Central Government for decision and the decision of the Central Government shall be final and shall not be liable to be questioned in any court of law.

SECTION 6 . Power of Central Government to levy protective duties in certain cases.

(1) Where the Central Government, upon a recommendation made to it in this behalf by the Tariff Commission established under the Tariff Commission Act, 1951 (50 of 1951), is satisfied that circumstances exist which render it necessary to take immediate action to provide for the protection of the interests of any industry established in India, the Central Government may, by notification in the Official Gazette, impose on any goods imported into India in respect of which the said recommendation is made, a duty of customs of such amount, not exceeding the amount proposed in the said recommendation, as it thinks fit.

(2) Every duty imposed on any goods under sub-section (1) shall, for the purposes of this Act, be deemed to have been specified in the First Schedule as the duty leviable in respect of such goods.

(3) Where a notification has been issued under sub-section (1), the Central Government shall, unless the notification is in the meantime rescinded, have a Bill introduced in Parliament, as soon as may be, but in any case during the next session of Parliament following the date of the issue of the notification to give effect to the proposals in regard to the continuance of a protective duty of customs on the goods to which the notification relates, and the notification shall cease to have effect when such Bill becomes law, whether with or without modifications, but without prejudice to the validity of anything previously done there under.

Provided that if the notification under sub-section (1) is issued when Parliament is in session, such a Bill shall be introduced in Parliament during that session.

Provided further that where, for any reason, a Bill as aforesaid does not become law within six months from the date of its introduction in Parliament, the notification shall cease to have effect on the expiration of the said period of six months, but without prejudice to the validity of anything previously done there under

SECTION 7. Duration of protective duties and power of Central Government to alter them. —.

(1) When the duty specified in respect of any article in the First Schedule is characterised as protective in Column (5) of that Schedule, that duty shall have effect only up to and inclusive of the date, if any, specified in that Schedule.

(2) Where in respect of any such article the Central Government is satisfied after such inquiry as it thinks necessary that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, increase or reduce such duty to such extent as it thinks necessary.

(3) Every notification under sub-section (2), insofar as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect

only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done there under

(4) For the removal of doubts, it is hereby declared that any notification issued under sub-section (2), including any such notification approved or modified under sub-section (3), may be rescinded by the Central Government at any time by notification in the Official Gazette

SECTION 8B. Power of Central Government to impose safeguard duty.

(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article.

Provided that no such duty shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent or where the article is originating from more than one developing countries, then, so long as the aggregate of the imports from developing Countries each with less than three per cent. import share taken together does not exceed nine per cent of the total imports of that article into India.

Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

(2)The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected:

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), [shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone unless,—

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Explanation. - For the purposes of this section, the expressions “hundred per cent. export-oriented undertaking”, 8 [*] and “special economic zone” shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944 (1 of 1944).

(3) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(4) The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition.

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition.

Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

(4A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(5)The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

(6) For the purposes of this section, - (a) “developing country” means a country notified by the Central Government in the Official Gazette for the purposes of this section;

(b) “domestic industry” means the producers - (i) as a whole of the like article or a directly competitive article in India; or (ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) “serious injury” means an injury causing significant overall impairment in the position of a domestic industry;

(d) “threat of serious injury” means a clear and imminent danger of serious injury.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

SECTION 9.Countervailing duty on subsidized articles

(1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if –

(a) there is financial contribution by a Government, or any public body in the exporting or producing country or territory, that is, where - (i) a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both; (ii) Government revenue that is otherwise due is foregone or not collected (including fiscal incentives); (iii) a Government provides goods or services other than general infrastructure or purchases goods; (iv) a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or

(b) a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a

countervailing duty under this sub-section not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined, -

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and

(b) refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as so reduced.

(3)Subject to any rules made by the Central Government, by notification in the Official Gazette, the countervailing duty under sub-section (1) or sub-section (2) shall not be levied unless it is determined that –

(a) the subsidy relates to export performance;

(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or

(c) the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

4) If the Central Government, is of the opinion that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the Central Government may, by notification in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section and notwithstanding anything contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.

(5)The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(6)The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition :

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension :

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(7)The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.

(7A)The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

SECTION 9A . Anti- dumping duty on dumped articles.

(1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation. For the purposes of this section, -

(a) “margin of dumping”, in relation to an article, means the difference between its export price and its normal value;

(b) “export price”, in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) "Normal value", in relation to an article, means

(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or	(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the antidumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined:-

(a) The Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) Refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless, —

(i) Specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) The article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Explanation. — For the purposes of this sub-section, the expression “hundred per cent export-oriented undertaking” shall have the meaning assigned to it in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944.

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that - (i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and (ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the antidumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under subsection (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition.

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension :

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer : Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

(8) The provisions of the Customs Act, 1962 and the rules and regulations made there under, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

Ch 5 Valuation Under Custom

Section 14(1) – Transaction Value of Imported or Exported Goods
- Price actually paid / payable for goods when sold for export to/from India
- for delivery at time & place of importation/ exportation
- buyer & seller not related
- price sole consideration for sale
- subject to conditions prescribed by rules.

Note- For Import is Assessable Value is CIF And For Exports is Assessable value is FOB

Determination of Assessable Value and calculation of custom duty

Ex-Factory Cost
Add: Transport Charges at Exporter's Country
Add: Handling Charges and Loading Charges
FOB (Free on Board) XXX
Add : Adjustment for 10(1) expenses i.e. Commission, Engineering, design work,royalties and license fees and any other payment made as a condition of sale
Adjusted FOB
Add : Adjustment for 10(2) Expenses i.e. Freight Cost
Add : Adjustment for 10(2) Expenses i.e. Insurance cost
CIF being Assessable Value - (A)
BCD @ Applicable % on (A) - (B)
Add: Social Welfare Surcharge (SWS) @ 10% on (A) - (C)
Total value for the purpose of levy of IGST u/s 3 (7) of Customs Tariff Act (A+B+C)
IGST @ Applicable Rate (D)
Total Custom Duty Payable (B+C+D)

Section 14 (2) – Tariff Value
CBEC may notify Tariff values for any class of imported/ export goods

Value of Imported Goods by Valuation Rule i.e Customs Valuation (Determination of value of Imported Goods) Rules, 2007, to be applied sequentially

TV of imported goods [Rule 3]
TV of identical goods [Rule 4]
TV of similar goods [Rule 5]
Deductive Value based on identical/similar imported goods [Rule 7]
Computed Value [Rule 8]
Residual method (Rule9)

RULE 2(2) Related

For the purpose of these rules, persons shall be deemed to be “related" only if - d) The buyer and seller are not related
i) they are officers or directors of one another's businesses;
ii) they are legally recognized partners in business;
iii) they are employer and employee;
iv) any person directly or indirectly owns, controls or holds 5 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;
i) both of them are directly or indirectly controlled by a third person;
ii) together they directly or indirectly control a third person;
iii) they are members of the same family.
Explanation: sole agent / distributor shall be treated as related only if they are covered within any criteria of this sub-rule

Rule 3(1) Subject to Rule 12 the value of imported goods shall be the transaction value adjusted in accordance with Prov. of Rule 10

<u>Adjustment for Rule 10 (1) Expenses</u>

(a) Commission, brokerage and Packing charges
If incurred by the buyer but are not included in the price actually paid or payable :
(i) commissions and brokerage, except buying commissions;
(ii) the cost of containers which are treated as being one for customs purposes with the goods in
question;
(iii) the cost of packing whether for labour or materials.
Note: “buying commissions” means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

(b) Free assistance by Buyer
Apportioned value of goods or services: where supplied directly or indirectly by the buyer free of
charge or at reduced cost for use in connection with the production and sale for export of imported
goods to the extent that such value has not been included in the price actually paid or payable, namely:-
(i) materials, components, parts and similar items incorporated in the imported goods;
(ii) tools, dies, moulds and similar items used in the production of the Imported goods;
(iii) materials consumed in the production of the imported goods;
(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere
than in India and necessary for the production of the imported goods.

(c) Royalty and License Fees (If Includes patent, copy rights,)

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
(e) all other payments actually made or to be made
• as a condition of sale of the imported goods,
• by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller
• to the extent that such payments are not included in the price actually paid or payable.

<u>Adjustment for Rule 10 (2) Expenses i.e. Cost of Transportation & Insurance</u>
Cost of Insurance
1.If Cost Ascertainable then such Actual cost to be included for Valuation
2.If Cost Not Ascertainable
(a) If FOB value is ascertainable then 1.125 % of FOB
(b) If FOB Value not ascertainable and Cost of Transport, loading, unloading and handling charges is ascertainable then 1.125 % of Such sum

Cost of Transport, loading, unloading and Handling Charges
If Ascertainable then Actual cost but in case of Air Restricted to 20%

If Actual Not Ascertainable-
i.FOB Value is Ascertainable 20 % of FOB
ii.FOB value is not ascertainable but the sum of FOB value and the cost of insurance is ascertainable 20 % of Such Sum

Rule 3(2)
T.V of imported shall be accepted subject to following conditions.
a) There are no restrictions as to the disposition or use of the goods by the buyer other than restrictions with
- Are imposed or required by law or by the public authorities in India or,
- Limit the geographical area in which the goods may be resold or,
- Do not substantially affect the value of the goods
b) The sale or price is not subject to some condition or consideration for which a v a l u e c a n n o t b e
determined in respect of the goods being valued.
c) No part of the proceeds of any subsequent resale, disposal or use of the goods directly or indirectly to
the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 10
For the purpose of these rules, persons shall be deemed to be “related" only if - d) The buyer and seller are not related
Rule 3(3) The buyer and seller are related that transaction value is acceptable for customs purposes) if,
The examination of circumstances of sale of imported goods indicated that the relationship does not influence the
Price and Where Importer demonstrate that his declared value is approx equal to:-

- TV of Identical goods or similar goods.
- Deductive value of IG/SG.
- Computed value of IG/SG.

Rule 4
Value = TV of Identical Goods
• imported at/ about same time
• at same commercial level & in substantially same qty (or value is accordingly adjusted)
• as goods being valued

Rule 5
Value = TV of Similar Goods
• imported at/ about same time
• at same commercial level & in substantially same qty (or value accordingly adjusted)
• as goods being valued

Rule 7
Value = Deductive Value
• If goods being valued/ identical/ similar goods are sold in India, in the same condition as imported, at/ about same time:
• AV = S.P – [Commission, sales expenses, profit, transport & insurance, customs duties & other taxes payable], IN INDIA.
• S.P. is unit price at which imported/ identical/ similar imported goods sold in greatest aggregate qty to unrelated persons in India

Rule 8
Value = Computed Value
• Computed Value = Sum of Cost of material, processing employed in producing imported goods,
profit & general Expenses reflected in sale of same class goods made in country of exportation for export to India & expenses/ cost under rule 10(2).

"Identical Goods- Imported Goods	"Similar Goods"- Imported Goods
Same Physical features, quality Etc	Like feature and component material commercially interchangeably with imported goods
Same Country of production	Same Country of production
Same producer (if not then others allowed)	Same producer (if not then others allowed)

Valuation of Exported Goods

Rule 3 : Determination of Method of Valuation
• Subject to rule 8, the value of export goods shall be the transaction value.

• The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
• If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

Rule 4 : Determination Of Export Value By Comparison
The value of the export goods shall be based on the Transaction value of the goods of the like kind and quality, exported at or about the same time, to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with Rule 4(2).

Rule 5 : Computed Value Method
If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-
(a) cost of production, manufacture or processing of export goods;
(b) charges, if any, for the design or brand;
(c) an amount towards profit.

Rule 6 : Residual Method
Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

Social welfare Surcharge
(1) There shall be levied and collected, in accordance with the provisions of this Chapter, for the purposes of the Union, a duty of Customs, to be called a Social Welfare Surcharge, on the goods specified in the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), being the goods imported into India, to fulfil the commitment of the Government to provide and finance education, health and social security.

(2) The Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Social Welfare Surcharge levied under this Chapter for the purposes specified in sub-section (1), as it may consider necessary.

(3) The Social Welfare Surcharge levied under sub-section (1), shall be calculated at the rate of ten per cent. on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue) under section 12 of the Customs Act, 1962 and any sum chargeable on the goods specified in sub-section (1) under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including—
(a) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act;
(b) the countervailing duty referred to in section 9 of the Customs Tariff Act;
(c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act;

(d) the Social Welfare Surcharge on imported goods levied under sub-section (1).

(4) The Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

(5) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refunds, exemptions, interest, appeals, offences and
penalties shall, as far as may be, apply in relation to the levy and collection of the Social Welfare Surcharge on imported goods as they apply in relation to the levy and collection of duties of customs on such goods under the Customs Act, 1962 or the rules or the regulations, as the case may be.

Ch 6 No or Less Custom duty in Certain case

Section 25 CG has Power to grant Exemption

1. By General Exemption- exempt generally either absolutely or subject to such conditions as may be specified in the notification.
2. By Special Exemption- it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under Circumstances of an exceptional nature to be stated in such order.

Section 13-Duty on Pilfered goods
If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods. However, where such goods are restored to the importer after pilferage, the importer becomes liable to duty.

Section 22 Abatement Of Duty On Damaged Or Deteriorated Goods

Where it is shown to the satisfaction of the AC / DC of Customs -
(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
(b) at any time after the unloading thereof in India but before their examination u/s 17
(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent, Duty in such cases shall be calculated in following manner:

Duty leviable on such damaged or deteriorated goods =
Duty chargeable on the goods before the damage or deterioration DIVIDED BY Value o f goods before damage X Value of the damaged

Section 23 Remission Of Duty On Goods Lost, Destroyed Or Abandoned

Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the AC or DC of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the AC or DC shall remit the duty on such goods. [Sub-section (1)].

Section 24 Denaturing Or Mutilation Of Goods

Provides that an importer can request Central Government to make rules for permitting to denature/mutilate the imported goods, which are ordinarily used for more than one purpose, so as to render them unfit for one or more of such purpose.

If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, than denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes. After denaturing process, goods can be used only for
one purpose and accordingly duty can be levied.
Note- Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.

Section 21 Goods derelict, wreck etc.
All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

Mangalore Refinery& Petrochemicals Ltd. 2015- In case of import of crude oil,
customs duty is payable on the basisi of the actual quantity received into shore tanks in
India & not the basis of quantity of oil shown in the bill of landing.

Ch 7 Warehousing

Types of Warehouse

1. Section 57 – Public Warehouse
• Licensed by Principal Comm of Custom / Comm of Custom
• Wherein dutiable goods may be deposited
2. Section 58 – Private Warehouse
• Licensed by Principal Comm of Custom / Comm of Custom
• wherein dutiable goods imported by licensee are deposited
Note- Private & Public W/H are under record based controls & not under customs lock.
3. Section 58A – Special Warehouse
• Licensed by Principal Comm of Custom / Comm of Custom
• wherein dutiable goods notified by CBEC may be deposited
Note- Special Warehouse remains under physical control of Proper officer

Sec. 59 - Warehousing Bond

1) Importer shall Execute Bond equal to 3 duty along with Security
2) Bond is for
- to comply provision of the act
- to pay duty & interest
- to pay penalty if any
3) General Bond is allowed on permission of AC/DC
4) No need to change Bond in case of transfer of goods from one warehouse to another
5) If warehouse goods transferred to another then transferee shall execute new bond

Requirement of bond where goods kept in warehouse

Importer has to furnish Warehousing Bond + Security for warehousing goods / or for transferring goods from one Warehouse to another Warehouse, without paying customs duties
a) General Bond- Assistant Commissioner /Deputy Commissioner may permit importer to execute General Bond in respect of goods warehoused within a specified period.
b) Consignment Bond- Thrice the amount of duty.

Section 60 Warehousing Order- After bond is furnished; PO will make order for removal of goods from customs station (CS) for deposit in a W/H. Transit of goods from custom station to warehouse will be in a prescribed manner.

May 19 Amendments
Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria

Sec 61 - Warehousing Period
The period for which imported goods may be kept in a warehouse without payment of duty is called warehousing period. Such period may be extended to a limited extent, with interest on the duty thus deferred.
a)In case Goods for use in any 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permitted under section 65
i) Capital goods- Till the clearance of such goods from warehouse
ii) Other goods- Till the consumption or clearance of such goods
b) Goods other than a)Above- Till the expiry of 1 year from the date of order u/s 60(1)

Interest on payment of Duty for goods kept in warehouse

a) Capital goods and other goods for use in any 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permitted under section 65 then No interest is payable as goods can remain in the warehouse till their clearance or consumption.

b) Goods other than a) above Interest will be payable at Rate fixed u/s 47 which is 15% p.a. on value of Duty payable at the time of clearance of the goods ,only if goods remain in the warehouse beyond 90 days from the date on which the order under section 60(1) is made.

Pratibha Processors v. UOI 1996 (S.C.)
If no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal.

Swil Ltd (Guj.)
when the goods are re-exported after the prescribed time limit (90 days) for warehousing, there is no liability to pay duty. Therefore, no interest is leviable for warehousing beyond the prescribed time.

Removal of Goods from warehouse
Sec. 71 : Proper Removal
Warehoused goods are said to be properly removed in following cases
1) Sec 67 - Transfer to another warehouse
2) Sec 68 - Clearance for Home Consumption
3) Sec 69 - Clearance for Export
4) Any other purpose provided in this Act
Goods can be removed from W/H ONLY for clearance to another warehouse / for home consumption / export/ as provided under Act

Section 67 : Removal of goods from one warehouse to another
The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Section 68: Clearance of warehoused goods for home consumption Warehoused goods may be cleared from the warehouse for home consumption, if –
(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
(b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and
(c) an order for clearance of such goods for home consumption has been made by the proper officer.
May 19 Amendments
Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Circular No.15/2009
Provision of Sec 47(2) are not attracted in case of clearances under Sec 68. Thus no interest is payable if payament is not made within 2 working days from the date on which bill of entry presented under Sec 68 is return after assessment for payment.

Section 69: Warehouse goods exported without payment of duty
- Importer can remove goods for export without payment of duty
- Shipping Bill/Bill of Export is presented
- Export duties, penalties, if any is paid
- PO has made Let Export Order.

May 19 Amendments
Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Sec. 70 : Remission of duty on volatile goods
The commissioner may remit the duty in case of deficiency is found in quantity on account of natural loss. This section applies to such warehoused goods the Central Government, having regard to the volatility of the goods and the manner of their storage, may be notification in the Official Gazette specify.

SC72: Goods Improperly Removed From Warehouse

Section 72 : Goods can be said improperly removed from warehouse, in following cases:
(a) where any warehoused goods are removed from a warehouse in contravention of section 71;
(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

(d) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer.

<u>Kesoram Rayon (S.C.)1996</u>
Under clause (b) of section 72, goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed. The rate of duty applicable will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end.

<u>Section 73 Cancellation and return of the warehouse bond</u>
Cancellation of W/H Bond – PO can cancel the W/H Bond as discharged in full when whole of goods have been cleared for home consumption / export/ transfer / duly accounted for and all amount thereof has been paid.

Ch 8 Duty Drawback under Custom

Drawback Meaning

Section 74 - Where Imported Goods Are Used Before Re- Exportation drawback", in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff Act, 1975 and paid on importation of such goods in terms of section 74 of the Customs Act. Thus, IGST and GST compensation cess paid on imported goods is also liable for drawback

Section 75 Where Imported Materials Used In The Manufacture Of Export Goods, drawback", in relation to any goods exported out of India, means the refund of duty excluding IGST leviable u/s 3(7) and compensation cess levaible u/s 3(9) of the customs Tariff Act, 1975 chargeable on any imported material or excisable materials used in he manufacture of such goods. Thus, IGST and GST compensation cess paid on imported goods is not eligible for drawback.

Conditions for availing drawback u/s 74 and Section 75

The goods must be capable of being identified Duty drawback shall be allowed even if the imported goods are taken into use and then exported. The goods must be exported within 2 years from the date of payment of duty or such extended time allowed by board. Duty drawback is allowed 98% of the import duty, if the goods are exported without use and in case if they are taken into use drawback is allowed at notified rate depending upon the period of use	There is no criteria of such identification since the inputs are manufactured before their export Drawback is available only in respect of notified goods If the goods manufactured from imported material are used in India and subsequently exported, then no duty drawback shall be allowed. The goods exported may be manufactured or processed from imported or indigenous inputs. There is no time limit for such exportation There should not be any negative value addition and minimum value addition must be achieved, if specified.

Sec. 74: Rate of Drawback in group re-exported after use

1) Rate of Drawback notified by the Central Government : The Central Government, has notified the drawback rates in respect of goods taken into use after importation

Length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export	% of duty to be paid as Drawback
Not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	Nil

2) Special rate of drawback for motor vehicles

• If the car or specified goods are re-exported immediately: 98% of the duty paid is refundable.

• If the car or specified goods are re-exported after being used: Percentage of reduction of the drawback is related to use of the motor vehicle per quarter as under-

Year	Drawback of duty shall be calculated by reducing the import duty by
1	4% per quarter or part thereof
2	3% per quarter or part thereof
3	2.5% per quarter or part thereof
4	2 % per quarter or part thereof

<u>Section 75A Interest on Drawback</u>

<u>Interest payable by Department</u>

Drawback must be paid within 1 month,If Not paid Interest @ 6% p.a. from the date of expiry of the said person of 1 month till the date of payment of such drawback

<u>Interest payable by Importer</u>

If, drawback has been paid to the exporter erroneously Interest @ 18 % p.a. shall be payable from the date of erroneously refund to date of payment.(2 month time limit from Demand date).

Adjustment : When the amount of drawback payable on the goods is finally determined, the amount
provisionally paid to the applicant shall be adjusted against the drawback finally payable.

(a) If Provisional amount > Final Drawback : Excess paid shall be repaid by the Applicant.

(b) If Provisional amount < Final Drawback : Applicant is entitled to the balance amount.

No Drawback in certain goods

i. Goods being used after importation

• Wearing apparels
• Tea Chests
• Photographic Films & X-ray
• Paper & Plates

ii. When the amount of drawback is less than Rs. 50

iii. in respect of any goods, the market price of which is less than the amount of drawback due thereon

iv. If the Central Government is of the opinion that goods of any specified description in respect of
which drawback is claimed under this chapter are likely to be smuggled back into India

Section 75 Drawback u/s 75 is as per Customs And Central Excise Duties Drawback Rules, 2017

RULE 2. Definitions

(a) "Drawback"- in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable under sub-section (7) and compensation cess leviable under sub section (9) respectively of section 3 of the Customs Tariff Act, 1975.,
chargeable on
*any imported materials or
*excisable materials used or
*used in the manufacture of such goods

(b) Excisable material- means any material produced or manufactured in India subject to a duty of excise under the Central Excises Act, 1944

(c) Export- With its grammatical variations and cognate expressions, means taking out of India to a place outside India or taking out from a place in Domestic Tariff Area (DTA) to a special economic zone and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

(d) Imported material- means any material imported into India and on which duty is chargeable under the Customs Act, 1962

(e) "Manufacture" Includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly

(f) "Tax Invoice" means the tax invoice referred to in section 31 of the Central Goods and Services Tax Act, 2017.

Rule 3 All Industry Rate (AIR)

All Industry Drawback Rates (AIDR) are fixed under rule 3 by considering average quantity and value of each class of inputs imported or manufactured in India. Drawback is limited to incidence of duties of Customs on inputs used and remnant Central Excise Duty on specified petroleum products used for generation of captive power for manufacture or processing of export goods.

1. It is notified by the central government.

2. It is based on FOB price of export goods subject to Value Cap.
3. Normally it is revised on 1st June after considering the changes in budget.
4. It shall be determined after considering the following information -
Average duty paid on imported material,Average Duty paid on Excisable material used in the production ,Average duty paid on material used for packing or containing exports goods and Average FOB price of
export goods.

RULE 4. Revision of rates. - The Central Government may revise amount or rates determined under rule 3.

RULE 5. Relevant Date for Determination of AIR

Rule 6 Brand Rate
Brand Rate : Where no drawback is determined, the manufacturer/exporter has to apply for drawback within 3 months (extension by principal commissioner or Comm for 6 months)seeking a brand rate from the Government giving all date and information about use of inputs, manufacture etc. Also Application Fees : 1% of FOB or Rs. 1000 whichever is less

Rule 7 Special Brand Rate
Where amount or rate of drawback determined is low the drawback rate is low, a SPECIAL BRAND RATE will be applicable. Where the rate is lower than 80% of the duties paid, revised rate may be applied for within 3 months (extension by principal commissioner or Comm for 6 months) also Application Fees : 1% of FOB or Rs. 1000 whichever is less.

Rule 9 : Upper Limit of Drawback amount or rate – The drawback amount or rate determined under rule 3 shall not exceed on1/3rd of the market price of the export product.

SECTION 20: RE-IMPORTATION OF GOODS

1.It provides that, if goods are imported into India after exportation there form, thenSuch goods shall be liable to duty and it shall Be subject to all the condition and restriction, if any To which goods of the like kind and value are liable on the importation thereof.
2. Re-imported goods are treated at par with other goods, which are imported.

Nov 2019 Amendments

Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process Notification No. 60/2018

1.Goods manufactured in India and re-imported for Repairs or for reconditioning other than the specified goods then Time-limit for re-importation from the date of exportation is 3 years (10 in case of export to Nepal).

2.Goods manufactured in India and re-imported for
(a) Reprocessing
(b) Refining
(c) Re-making
(d) Subject to any process similar to the processes referred to in clauses (a) to (c) above ,
Then Time-limit for re-importation from the date of exportation is 1 year in all case. If any loss of imported goods is noticed during such operation [i.e. (a) to (d)], then such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/ Deputy Commissioner of Customs.

Note- Other conditions to be satisfied
(a) Goods must be re-exported within 6 months (extendable till 1 year) of the date of re-importation.
(b) The AC/DC Commissioner of Customs is satisfied as regards identity of the goods.
(c) The importer at the time of importation executes a bond.

Note- The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.

N/N158/95 and 45/2017 & 60/2018Exemptions or concessions available in respect of re-import
1. Goods manufactured in India and exporter and re-imported in India for-
(i) Repairs or re-conditioning, other than goods specified in Annexure within 3 years (10 years in Case of Nepal and Bhutan
(ii) reprocessing/refining/re (making or other similar process within 1 year
Note- Duty is Fully exempt, if-
(a) Such goods are re-exported within 6 months from date of re-import (extension upto 6 months allowed by Commissioner or Principal Commissioner) ; and
(b) Assistant Commissioner is satisfied about identity of such goods

2. Goods re-imported without being subjected to re-manufacturing or reprocessing through melting recycling or recasting abroad within 3 years from date of export +2 yrs extension (only for (c) : in 1 yrs. From export + 1 yrs. Extension)

[A] if exporter under following benefit

(a) claiming drawback/refund of customs or central excise or state excise, or IGST then BCD, IGST & GST Cess is exempt and payable is drawback/refund of customs or central/state excise duty, or IGST
(b) Under bond without payment of IGST then BCD, IGST & GST Cess is exempt and payable is Amounts of IGST not paid.
(c) under duty exemption scheme (D E E C / A d v a n c e Authorization/DFIA) or Export Promotion Capital Goods Scheme (EPCG) BCD, IGST & GST Cess is exempt and payable Amount of IGST and GST compensation cess leviable at time and place of import

[B] Re-import of any other Goods (not falling under 2(a) to 2(c)) exported for repairs abroad and there has
been no change in ownership of the goods between the time of export of such goods and re-import thereof BCD, IGST & GST Cess is exempt and payable Value (for levy of duty) = Fair cost of repairs +Cost of materials used in repairs (such cost includible even if not actually incurred) + insurance and freight (to and fro)

[C] Re-import of any other exported Goods Then BCD, IGST & GST Cess is exempt and payable is Nil.

3. Goods as specified in Annexure, manufactured in India and re imported into India for repairs or for
Reconditioning then Time-limit for re-import is within 7 year (10 years in case of Nepal and Bhutan and Duty is Fully exempt if-
(a) Goods are re-exported within 1 yr. or the date reimportation
(b) Assistant/Deputy Commissioner of Custom is satisfied as regards identity of the goods
(c) Failure to comply with conditions amount = duty levied at the time of re-import - duty levieable on
Such goods at the time of importation

Ch 9 Stores Post Article

Sction 2 (38) Store means goods for used in vessel or aircraft Includes fuel, spare parts & other articles of equipment whether or not for immediate fittings.

Sec. 2(21) Foreign-GoingVESSEL or AIRCRAFT- Any vessel or aircraft for the time being engaged in the carriages of goods or passenger between any port or airport in India & any port or airport outside India. Whether touching any intermediate port or airport in India or not and includes
(i)any naval vessel of foreign govt. taking port in any naval exercise
(ii) any vessel engaged in fishing or any other, operations, outside the territorial water of India.
(iii) any vessel or aircraft proceeding to a place outside India for any purpose what so ever.

POST ARTICLES
Post Master handling foreign post in Customs Area prepare list of parcels & send it to customs authority for appraisement
Customs authority will return the assessed parcel with certificates and Transfer of parcel to respective territory
Now respective territory post master collect parcel from Custom authority and will deliver the parcel and collect Assessed amount including duty from addressee

SECTION 82: LABEL OR DECLARATION ACCOMPANYING GOODS TO BE TREATED AS ENTRY (Deleted)

Sec. 83 Relevant date for duty rate is tariff value of post article
IMPORTED GOODS
<u>by vessels</u>

a) If list of the goods containing the particulars was presented after the date of the arrival of the vessel, then date of presentation of list by Postal authorities to the proper officer for the assessment of duty.
b) If list of the goods containing the particulars was presented before the date of the arrival of the vessel, date of arrival of vessel

<u>by Aircraft /vehicle</u> date of presentation of list by Postal authorities to the proper officer for the assessment of duty

EXPORT GOODS
Date on which the exporter delivers such goods to postal authorities for exportation.

SECTION 84 - REGULATIONS REGARDING GOODS IMPORTED OR TO BE EXPORTED BY POST
The Board may make regulations providing for
a) The form and manner in which an entry may be made in respect of goods imported or to be exported by post
[amendment by Finance Act, 2017 w.e.f. 31-3-2017)

b) The examination, assessment to duty, and clearance of goods imported or to be exported by post.
c) The transit or transhipment of goods imported by post, from one customs station to another or to a place outside India.

Section 85: Stores allowed to deposited in warehouse without warehousing provisions of warehousing

Section 86: Transit and transshipment of stores allowed without duty

Section 87: Imported stores may be consumed on board a foreign-going vessel or aircraft

Section 88: 1) Duty paid imported stores eligible for drawback as follows
Aircraft
Fuel and lubricant oil, 100 % drawback
Other stores i.e. (e.g. food, drink etc.), 98 % drawback
Vessels
Fuel, Lubricant oil and other stores, 98 % drawback

Section 89: Goods manufactured in India and required as a stores on Foreign going vessel / Foreign aircraft.
Section 90: Imported Stores may be consumed on board a ship of the Indian Navy.

Ch 10 Baggage

Meaning

Baggage means luggage or personal belongings of a passenger or crew members

Unaccompanied Baggage- Unaccompanied Baggage refers to Baggage that is not accompanied with Passenger. Unaccompanied baggage may arrive within a period of 1 month after passengers arrival or before 2 months before arrival (condonation of earlier arrival by AC/DC).

Definition SEC. 2(3) BAGGAGE Include - Unaccompanied baggage but does not include motor vehicle.

Rate of Duty

Rate of Duty on baggage is 38.5% (including social welfare surcharge of 10%)
Baggage is covered under tariff heading 9803 where duty payable is
Basic Customs Duty : @ 35% ad valorem
Social Welfare Surcharge @ 10% of BCD
ACD 3(1) (CVD) : Nil
ACD 3(5) (Sp. CVD) : Nil
Special Additional Duty under section 3A of the Customs Tariff Act : Nil

Section 77: For clearing the baggage, the owner shall make a declaration of its content to proper officer
Section 78: Relevant date for custom duty : date on which declaration is made in respect of such baggage.
Section 79: Bonafide Baggage is exempted from duty to the extent specified in rules.

Baggage Rule 2016

Important Definitions

"Infant"- means a child not more than two years of age;
“Resident”- means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
"Tourist"- means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate nonimmigrant purposes
"personal effects"- means things required for satisfying daily necessities but does not include jewellery

Rule 3: Passengers arriving from countries other than Nepal, Bhutan or Myanmar
<u>Class of passengers</u> : Indian resident or Foreigner residing in India or Tourist of Indian origin
(i) Used personal effects and travel souvenirs-Free

(ii) Articles other than mentioned in Annexure – I Rs. 50,000

Class of passengers : Tourist of foreign origin
(i) Used personal effects and travel souvenirs- Free
(ii) Articles other than mentioned in Annexure – I Rs. 15,000

Class of passengers : Infant
(i) Used personal effects and travel souvenirs; -Free
(ii) Articles other than mentioned in Annexure – I No Benefit

Rule 4 : Passengers arriving from Nepal, Bhutan or Myanmar

Class of Passengers : Indian resident or Foreigner residing in India or Tourist, excluding an infant
(i) Used personal effects and travel souvenirs; - Free
(ii) Articles other than mentioned in Annexure – I
(a) Passenger is arriving by Land Route -No Benefit
(b) Passenger is arriving by other Route Rs. 15,000

Class of Passengers : Tourist of Foreign origin
(i) Used personal effects and travel souvenirs; - Free
(ii) Articles other than mentioned in Annexure – I
(a) Passenger is arriving by Land Route- No Benefit
(b) Passenger is arriving by other Route- Rs. 15,000

Class of Passengers : Infant
(i) Used personal effects and travel souvenirs; - Free
(ii) Articles other than mentioned in Annexure – I

Annexure - I (See Rule 3, 4 and 6)
1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

Rule 5 : Jewellery
Passenger residing abroad for more than one year in Origin country from which the passenger is coming
Gentleman Passenger Jewellery up to a weight of 20 gms with a value cap of Rs. 50,000

Lady Passenger Jewellery up to a weight of 40 gms with a value cap of Rs. 1,00,000

RULE 6 : TRANSFER OF RESIDENCE
A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, in following manner-

I.Indian passenger Stay abroad From three months up to six months, then Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in
Annexure III upto an aggregate value of sixty thousand rupees.

II.Indian passenger Stay abroad From six months upto one year,then Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in
Annexure III, upto an aggregate value of one lakh rupees.

III.The Indian passenger who have not availed this concession in the preceding three years and Stayed abroad Minimum stay of one year during the preceding two years,then Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of two lakh rupees.

IV.Stay abroad Minimum stay of two years or more, then Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of five lakh rupees subject to condition
(i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence;
Note- shortfall of upto two months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of :-
(a) terminal leave or vacation being availed of by the passenger; or
(b) any other special circumstances for reasons to be recorded in writing.

(ii) Total stay in India on short visit during the two preceding years should not exceed six months;
Note- the Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing

(iii) Passenger has not availed this concession in the preceding three years.
Note- No relaxation for this condition

Chapter 11 AUDIT

SECTION 99A: AUDIT
The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed

CUSTOM AUDIT REGULATIONS, 2018

“Audit” includes examination or verification of declaration record, entry, document. import or export license, authorization, scrip, certificate, permission etc. book of account, testy or analysis, report, and any other document relating to imported goods or export goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples.

“Auditee” means a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

“Audit report” includes the audit finding in the report prepared after the audit containing details about
objections raised by the proper officer and explanation given by the auditee, if any.

“Books of account” includes ledgers, day -book, cashbooks, cash books, account books, other accounts
related record whether kelt in written or printed form or stored electronically.

“Electronic record” means data or record stored in any form and manner relevant for the purpose of Audit
under section 99A of the Act.

“Premises” includes the registered office, branch office, warehouses, factory, or any other premises at which, imported goods or export goods or dutiable goods or books of account or records of transaction or other related documents, in relation to the said goods are ordinarily kept for any purpose by an auditee

Auditee to preserve and make available relevant documents :-
a) Auditee shall preserve and make available in a timely manner, for audit,
• true and correct information, records including electronic records,
• documents or accounts maintained in compliance of the provisions of Act,
• maintained for a minimum period of five years in relation
• to imported goods or export goods or dutiable goods.

b) The auditee shall render assistance and shall in no case refuse or abstract the proper officer or his team of officer in discharge of their official duty

Selection for Audit:-

The selection of auditee is based on risk evaluation though appropriate selectively criteria.

Manner of conducting audit:-

a) The Proper officer may conduct audit either in his office or in certain cases at the premises of an auditee

b) The proper officer may, request the auditee to furnish documents, information or record including electronic record, as may by relevant to audit.

c) The proper officer shall give not less than fifteen days advance notice to the auditee to conduct audit

d) The proper officer may, where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available, with him.

e) The proper officer shall inform the auditee of the objections, if any before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.

f) where the auditee is an agreement with the audit findings, he may make voluntary payments shall

G) where the proper officer has asked the auditee to furnish information, documents record or sample for the purposes of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.

h) The proper officer shall complete audit in cases where it is conducted at the premises of the auditee within thirty days from the date off starting of the audit.

Provided that the jurisdictional Commissioner of Customs may extend the period of completion of audit from thirty days to sixty days, by an order in writing.

Assistance of Professionals: If the proper officer, having regard to the nature and complexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional or expert may do so, with the previous approval of the Principal Commissioner/ Commissioner of Customs.

Penalty : Any auditee, who contravenes, shall be liable to a penalty which may extend to fifty thousand Indian rupees.

Ch 12 Confiscation & Penalty

Confiscation due to reason of improperly Import or Export :

Penalty: The person who has done the act where goods liable to confiscation or any other person who in any way concerned with such goods liable to confiscation shall subject to following penalty:

(A) Prohibited goods

Penalty u/s 112 on imported goods- Value of goods or Rs. 5000 whichever is higher

Penalty u/s 113 on export goods- 3 times of Value declared or Value as per act whichever is higher

(B) Dutiable goods other than prohibited goods

Penalty u/s 112 on imported goods- 10% of duty evaded or Rs, 5000 whichever is higher

If duty & interest is paid within 30 days of order then penalty = 25% of penalty as above

Penalty u/s 113 on export goods-

10% of duty evaded or Rs. 5000 whichever is higher

If duty & interest is paid within 30 days of order then penalty = 25% of penalty as above

Consequences of goods attempted to be improperly exported

Step 1 Sec 110: Seizure of Goods

1) If goods liable to confiscation – officer may seizure the goods

2) Punishable or hazardous goods can be sold instead of seizure

3) Inventory of seizure goods shall be prepared with description, quality, quantity etc & apply to magistrate for certifying its correctness.

Step 2 Confiscation Proceedings in following step

1) Sec 122 : Authority to Confiscation

Value upto Rs, 10,0000 – A Gazetted of officer of Customs lower in rank than an AC/DC of Customs

Value upto Rs. 1000000 – AC/DC

Without limit – commissioner or joint commissioner

2) Sec. 124 : Notice of Confiscation

SCN by proper officer in writting showing grounds of Confiscation

Opportunity of representation & hearing

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a

supplementary notice under such circumstances and in such manner as may be prescribed.

3) Sec. 123 :Hearing
Burden to prove that goods are smuggled goods
are Generally, that burden is on Dept.
But in respect of notified goods, burden shifted to assessee to prove bonafieds

4) Sec.126 : Confiscation Order
Ownership in goods stands transferred to CG
5) Sec. 125 : Option to pay Fine in lie of confiscation
Prohibited goods - Giving option is discretion of Proper Officer
Other goods - Giving option is mandatory for Proper Officer.
Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply

<u>Quantum of Redemption Fine - Maximum Fine is terms of Sec 125 (1)</u>
Imported goods- [Market Price - Import Duties] ,If assessee seeks to relase the goods on payment of Fine then in addition to that fine, he shall also be liable to pay Import Duties
Export goods- Market Price.

Ch-13 COASTAL GOODS

SEC 2 (7) “Coastal Goods” means goods, other than imported goods, transported in a vessel from one port in India to another.

PROCEDURE IN CASE OF COASTAL GOODS

1. The Consignor of any goods shall present “A Bill of Coastal goods”
2. “Bill of coastal goods” contains detail information about port of loading and destinated port at which the goods are to be discharged.
3. The bill has been passed by Customs Officers.
4. After passing bill, the goods will be loaded and the bill handed over to the master of vessels.
5. The Master of vessels shall not permit the loading of the goods until such bill is delivered to him by consignor.
6. The master of vessels will also carry an Advice book in which the customs officers will make suitable entries, relating to the goods loaded on the vessels at that port.
7. The Master of every such vessel shall carry the advice book on Board the vessels and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection.

<u>OFFICERS OF CUSTOMS</u>

section 3: classes of officers of customs
There shall be the following classes of officers of customs, namely:-
a) Principal Chief Commissioners of Customs;
b) Chief Commissioners of Customs;
c) Principal Commissioners of Customs;
d) Commissioners of Customs;
e) Commissioners of Customs (Appeals);
f) Joint Commissioners of Customs/ Additional Commissioners of Customs;
g) Deputy Commissioners of Customs;
h) Assistant Commissioners of Customs
i) Such other class of officers of customs as may be appointed for the purposes of this Act.

Power control & procedures of custom Officers
1. Sec 101 : Search of persons in customs area by proper officer, if he has reason to believe that person has secreted goods / things liable to confiscation
2. Sec 101 : Search of persons anywhere by empowered officer, if he has reason to believe that person has secreted gold / diamond / notified goods liable to confiscation
3. Power to search includes power to x-ray.
4. Sec 105 : AC/DC may search premises to get confiscable goods/useful documents

5. Sec 110 & 110A : Goods liable to confiscation may be seized - Goods may be provisionally released under bond - If show- cause notice not issued within 6 months from seizure, goods are to be returned back - Documents may also be seized - Assessee may take extracts / copies of seized documents
6. Sec 141 : Port/Airport Trust or Authority - In case of pilferage, they are liable to reimburse the loss to the importer and also pay customs duty to the department
7. Sec 143 : If condition of import cannot be fulfilled at time of import, import may be allowed on bond and later bond is discharge on fulfilment of condition later on
8. Sec 144 : Proper officer has power to take samples for testing, etc.
9. Sec 147 : Agent of importer / exporter is liable for - (I)purposes for which he is appointed as agent ; and (ii) liability to pay duty / other sums in respect of goods: recovery from agent only if recovery arises due to wilful / negligent act of agent
10. Sec 148 : Agent of Person-in-Charge of conveyance is also liable for all deeds including also for penalty and confiscations
11. Sec 150 : Goods other than confiscated goods may be sold in auction / tender and proceeds would be applied for : (I)expenses, (ii) duty, (iii) custodian /warehousing charges, (iv) other sums payable under Customs Act; and balance returned
12. Sec 154 : Clerical error may be corrected by Board / Central Govt. / Officer or his Successor.

SECTION 143AA: POWER TO SIMPLIFY OR PROVIDE DIFFERENT PROCEDURE, ETC., TO FACILITATE TRADE

Notwithstanding anything contained in any other provision of this Act, the Board may, for the purposes
of facilitation of trade, take such measures or prescribe separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods, in order to,—

(a) Maintain transparency in the import and export documentation; or
(b) Expedite clearance or release of goods entered for import or export; or
(c) Reduce the transaction cost of clearance of importing or exporting goods; or
(d) Maintain balance between customs control and facilitation of legitimate trade

SECTION 151B: RECIPROCAL ARRANGEMENT FOR EXCHANGE OF INFORMATION FACILITATING TRADE

(1) The Central Government may enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of this Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country.

(2) The Central Government may, by notification, direct that the provisions of this section shall apply to the contracting State with which reciprocal agreement or arrangements have been made, subject to such

conditions, exceptions or qualifications as may be specified in that notification.
(3) Subject to the provisions of sub-section (2), the information received under sub-section (1) may also be used as evidence in investigations and proceedings under this Act.

(4) Where the Central Government has entered into a multilateral agreement for exchange of information or documents for the purpose of verification of compliance in identified cases, the Board shall specify the
procedure for such exchange, the conditions subject to which such exchange shall be made and designation of the person through whom such information shall be exchanged.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3), anything done or any action taken or purported to have been done or taken, in pursuance to any agreement entered into or any other arrangement made by the Central Government prior to the date* on which the Finance Bill, 2018 receives the assent of the President, shall be deemed to have been done or taken under the provisions of this section.

Explanation.—For the purposes of this section, the expressions,—
(i) "contracting State" means any country outside India in respect of which agreement or arrangements
have been made by the Central Government with the Government or authority of such country through an agreement or otherwise

(ii) "corresponding law" means any law in force in the contracting State corresponding to any of the
provisions of this Act or dealing with offences in that country corresponding to any of the offences under this Act.

SECTION 153: MODES FOR SERVICE OF NOTICE, ORDER, ETC

The date of service of an order or a communication containing a decision is of vital importance, in case
the aggrieved party desires to file an appeal. The time limit allowed for appeal normally runs from the date of receipt of the communication containing the impugned decision by the aggrieved person.

There are circumstances where it is not effectively possible to ensure that such communications are received by the concerned party. There are other circumstances where disputes arise about the actual date of the receipt of communication. These two problems have necessitated a uniform procedure for dispatch and service of orders, decisions, summons and other communications issued under the Customs Act. Section 153 provides the specific mode of service in this regard which is reproduced below.

An order, decision, summons, notice or any other communication under this Act or the rules made

there under may be served in any of the following modes, namely :—
(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorized representative including employee, advocate or any other person or to any adult member of his family residing with him;

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorized representative, if any, at his last known place of business or residence;

(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the prescribed manner.

Further, when such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

14 Classification under Tariff

Classification of Goods means Determination of headings or sub headings of the CTA, 1975 under which the said goods are covered.

<u>Need of Classification</u>

(a) Determination of rate of duty
(b) Determination of eligibility of exemption
(c) Determination of deemed manufacture

<u>Burden to prove Classification</u>

1. Department : To establish correct Tariff Heading under which the product fails. Onus is on the department to establish alternate classification.
2. Assessee : When certain goods are prima facie covered by the generic description, the burden to prove that they are not so covered would be on the person claiming so

<u>CUSTOMS TARIFF ACT</u>

Tariff based on Harmonized System of Nomenclature [HSN] is called as CUSTOMS TARIFF ACT, 1975 containing two schedules
Schedule I for imported goods having 21 Sections and 99 chapters
Schedule II for export goods
Note- At the beginning of the sections, section notes are given
Note- At the beginning of the chapters, chapter notes are given

<u>Classification Principals</u>

Statutory principles -It is also called general interpretative rules (GIR) or Rules for interpretation of tariff
Non Statutory principles- It is also called as trade parlance theory.

<u>Trade Parlance Theory</u>

1. Goods are to be classified as they are known in trade and commerce, if it is neither defined in Schedule to CETA nor in CEA
2. Conditions: (a) a particular product description under trade parlance occurs by itself in a Tariff Entry, and (b) there is no conflict between Tariff entry and any other entry requiring reconciliation.
3. Exception: (a) Scientific and Technical Terms, and (b) Conflict with Statutory Context

<u>Features of Tariff</u>

I<u>. Four Columns in Customs Tariff Act, 1985 (CTA)</u>

1 Tariff - Eight Digit Description
2 Description of Goods -Names and Classifications

3 Units -Kilograms, Metres, Units, Litres Etc.
4 Rate of Duty -10%, 4%, Nil Etc

II. Dash System

1 Single dash (-) Indicates sub classification of article-covered in heading
2 Double dash (- -) Indicates sub classification of article preceded by 'Single dash'
3 Triple (- - -) & Quadruplicate (- - - -) Indicates sub-sub classification of article preceded by 'Single or double dash'

III. Eights Digit CODING System
First 2 digit indicates- Chapter No.
Next 2 digits Indicates- Heading No
Next 2 digits indicates - Subheading No.
Next 2 digits indicates- Specific Product ID

IV. Section notes & Chapter Notes-
Elaborate explanation regarding to scope of respective
section or chapter. It is part of the status & legally used for classification

V. Std. Unit of quantity
It is a unit and used to facilitate the collection, comparison and analysis of trade statistics.
Example :CC,Cm,Mt

VI. Abbreviation %-
It Indicates that duty is on the basis of value of goods   Harmonized System of Nomenclature
1. Meaning : Internationally accepted Product Coding system for Categorisation and Classification of commodities and was conceived and devised by the world Customs Organisation (WCD).
2. Features : 8 digit code suitable for multi-purpose nomenclature.
3. Reliance : HSN can be relied for classification under the Tariff Schedule, if there is no conflict between Indian Tariff Schedule and HSN.
4. Relevance of Notes : Only the Section Notes and chapter notes have legal status. Explanatory Notes to HSN do not have any legal status.

Alteration of Classification
1. Guidelines for altering classification - (a) Fresh facts arise (b) Process changed (c) Tariff entry modified (d) HC/SC decision, (e) Change in statue (f) Regular Tariff Entry - Not disturbed, (g) Prior Notice.
2. Judgment : Where an assessee has not filed fresh classification list, at the most, penalty can be levied. Issuance of Demand Notice is not sustainable.

General rules of interpretation

Why this Rule

1. To help in appropriate classification of goods
2. To give clear direction as to how the nomenclature in the Schedule is to be interpreted and
3. To give salutary force to the interpretation Rules and the general explanatory notes

Rule 1 Titles of section or chapters do not decide classification, Terms of heading, section of notes and Chapter Notes are relevant

Rule 2

a) Incomplete Goods/ Disassembled/ Unassembled Goods = Complete Goods

b) Main article – includes mixture or combination of that articles with others

Rule 3 If goods are prima facie classifiable under 2 or more heading due to Rule 2(b) or any other

Reason; apply Rule 3(a) to Rule 3(c)-

a) Specific Rule- Prefer specific heading to General Heading

b) Characteristic Rule-It mixture consist of different material classify in that material which gives them their essential character

c) Later the better- If both are equally specific prefer the latter tariff head to earlier tariff head

Rule 4 Akin Rule:

Goods which cannot be classified in accordance with the above rules shall be classified under the headings appropriate to the goods to which they are most akin.

Procedure to Claim the Refund

Any person claiming refund of any duty and interest paid on such duty, Paid by him in pursuance of an order of assessment, or Borne by him ,shall present a claim in proper (Form-R), along with All the relevant document supporting his claim and also The copies of documents/ records supporting his declaration that he has not passed on the duty incidence. Refund shall be claimed within 1 year from relevant date, provided No time limit if duty paid under protest.

On satisfaction the AC/DC may make the refund order: The amount so determined shall be credited to Consumer Welfare Fund. But appellant is entitled to refund only if he had not passed on the incidence of duty.

RELEVANT DATE FOR REFUND Normally, the relevant date is date of payment of customs duty & interest if any, but if

a) Duty is provisionally assessed. Relevant date is date of final assessment

b)If duty is paid by buyer, Relevant date is date of purchase of goods

Section 27 Circumstances under which refund will be paid to the assessee or in which Unjust Enrichment is not applicable

1. The duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be if he had not passed on the incidence of such duty and interest to any other person.
2. The duty and interest, if any, paid on such duty on imports made by an individual for his personal use.
3. The duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest to any other person.
4. The export duty as specified in Section 26
5. Drawback of duty payable under Sections 74 and 75
6. The duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify.

SEC 26 REFUND OF EXPORT DUTY

Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -
a) The goods are returned to such person otherwise than by way of re-sale;
b) The goods are re-imported within one year from the date of exportation; and
c) An application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

SEC 27A BELATED DISBURSEMENT OF REFUND BY C.G.
a) If any duty ordered to be refunded to an applicant is not refunded within three months from the date of receipt of application, there shall be paid to that applicant interest.
b) Rate of interest : 6% p.a. by the C.G.
c) Duration of interest : Interest is payable from the date of expiry of 3 months from the date of receipt of application till the date of refund of duty.
d)Interest shall be paid even where refund is granted by an Appellate Authority.

Ch 15 Advance Ruling

Meaning- Means a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation or exportation.

The Matter in which the Advance Ruling can be obtained
1.Classification of any goods under the CTA, 1975
2. Applicability of a Exemption notification issued under Section 25(1) having a bearing on the rate of duty
3. The principles to be adopted for the purposes of determination of value of the goods
4. Applicability of notifications issued in respect of tax or duties under this Act or the Customs Tariff Act, 1975 or any tax or duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act or the Customs Tariff Act
5. Determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975
6. Any other matter as the Central Government may, by notification, specify.

Advance Ruling can be obtained by Applicant on Application in prescribed Form and Manner.
Application for advance ruling can be withdrawn within 30 days from the date of application

Authority meaning- The custom Authority for advance rulings appointed under section 28EA*

SECTION 28EA AUTHORITY FOR ADVANCE RULINGS
The Board is empowered to appoint an officer of the rank of Principal Commissioner of Customs or Commissioner of Customs to function as a Customs Authority for Advance Rulings.
However, till the date of appointment of the Customs Authority for Advance Rulings, the existing Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall continue to be the Authority for giving advance rulings for the purposes of this Act.

The offices of the Authority may be established in New Delhi and at such other places, as the Board may deem fit. The Authority shall exercise the powers and authority conferred on it by or under this Act.

Appellate Authority for Advance Ruling means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961

SECTION 28F Appellate Authority for deciding appeal under this Chapter
The Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall be the Appellate Authority for deciding appeal under this Chapter. The said Appellate Authority shall exercise the jurisdiction, powers and authority conferred on it by or under this Act. Further, the Member from the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Board, shall be the revenue Member of the Appellate Authority for the purposes of this Act.

Applicant - means any person,—
(i) Holding a valid Importer-exporter Code Number granted under section 7 of the Foreign Trade (Development and Regulation) Act, 1992; or
(ii) Exporting any goods to India; or
(iii) With a justifiable cause to the satisfaction of the Authority, who makes an application for advance ruling under section 28H;

Sec 28J Applicability of Advance Ruling
1) Advance ruling shall be binding only -
a) on the application who had sought it
b) in respect of any matter referred to in sub-section (2) of section 28H
c) on the Principal Commissioner/Commissiner of Customs, and the customs authorities subordinate to him, in respect of the applicant.
2) Advance ruling shall be binding unless there is change in law or facts on the bases of which the advance ruling has been pronounced.

SECTION 28K ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES
Where the Authority finds, on a representation made to it by the Principal Commissioner/Commissioner of Customs or otherwise, that an advance ruling has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply to the applicant as if such advance ruling had never been made.
For recovery of any duty not levied, short-levied, not paid or short-paid on account of the advance ruling, the period beginning with the date of such advance ruling and ending with the date of the order shall be excluded
Further, in computing the period of two years or five years thereof, for service of notice. A copy of the order made shall be sent to the applicant and the Principal Comm/Commissioner of Customs.

SECTION 28KA APPEAL against ruling or order passed by the Customs Authority for Advance Rulings
Any officer authorized by the Board, by notification, or the applicant may file an appeal to the Appellate Authority against any ruling or order passed by the Customs Authority for Advance Rulings, within 60 days (Appellate Authority further period of 30 days appeal). from the date of the communication of such ruling or order, in the prescribed form and manner.

SECTION 28M PROCEDURE FOR AUTHORITY AND APPELLATE AUTHORITY
The procedure for Customs Authority for Advance Rulings may be provided by regulations by the Board. The Appellate Authority shall regulate its own procedure for the purpose of conducting its proceedings.

Ch 16 Demands and Recovery

Cases other than collusion, willful-misstatement etc. Where any duty payable: has not been levied has not been paid has been short-levied has been short-paid has been erroneously refunded for any reason other than the reasons of: collusion any willful misstatement suppression of facts	Cases of collusion, willful-misstatement etc. Where any duty payable: has not been levied has not been paid has been short-levied has been short-paid has been erroneously refunded by reason of: collusion any willful misstatement suppression of facts
The proper officer shall, within 2 years from the relevant date, serve notice on the person chargeable with the duty or interest. Before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest. Note- For computing period of 2 yearperiod of stay by order of court or tribunal shall be excluded	The proper officer shall, within 5years from the relevant date, serve notice on the person chargeable with duty or interest requiring him to show cause why he should not pay the amount specified in the notice. Note- For computing period of 5 years period of stay by order of court or tribunal shall be excluded
The person chargeable with the duty or interest, may pay before service of SCN on the basis of,- i) his own ascertainment of such duty; or ii) the duty ascertained by the proper officer, The amount of duty along with the interest. Such payment inform in writing to proper officer and he shall not serve any SCN for such payment and penalty. Note:- Proper office shall not serve SCN where amount is less than `100	Voluntary payment before SCN is not available but after SCN person can make the payment voluntarily. the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest @ 15% p.a. the penalty equal to 15%of the duty specified in the notice or the duty so accepted by that person, within 30 days of the receipt of the notice and inform the proper officer of such payment in writing
Where the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, then, he shall proceed to issue the notice in respect of such amount which falls short of the amount actually payable.	Where duty with interest and penalty that has been paid voluntarily after SCN falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice in respect of such amount which falls short of the

The period of 2 YEARS shall be computed from the date of receipt of information of payment.	amount actually payable
Proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation and shall determine the amount of duty within a period of six months from the date of notice. Senior officer may extent further period of 6 months	Proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation and shall determine the amount of duty within a period of one year from the date of notice. Provided that officer senior in rank to the proper officer may extent further period of one year where the proper officer is unable to determine the amount of duty or interest for the reason that— (a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme court or (b) an interim order of stay has been issued by the the proper officer shall inform the person concerned the reason for non determination of the amount of duty or interest shall apply not from the date of notice, but from the date when such reason ceases to exist. Newly Inserted Appellate Tribunal or the High Court or the Supreme Court; or (c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or (d) the Settlement Commission has admitted an application made by the person concerned, Then, the proper officer shall inform the person concerned the reason for non determination of the amount of duty or interest shall apply not from the date of

	notice, but from the date when such reason ceases to exist
Rate of Interest : 15% p.a. Period of interest : From the date on which such duty becomes due up to the date of actually payment. No interest is payable if it is payable consequent to board circular and paid within 45 day without reserving right of appeal.	Rate of interest : 15% p.a. Duration of interest : It shall be calculated from the date on which such duty becomes due up to the date of actually payment. No interest is payable if it is payable consequent to board circular and paid with in 45 days without reserving right up appeal.
	Person shall be liable to pay penalty equivalent to duty or interest so determined If duty interest and penalty is paid within 30 days of D.O. : then penalty payable shall reduce to 25% of duty or interest Provided also that in case where duty or interest determine to be payable is increase by Commissioner (Appeals), Appellate tribunal or the court, than, the benefit of reduce penalty available if the amount of duty or interest so increased, along with interest payable thereon, & 25% of the consequential increase in penalty have also been paid within 30 days of communication of order

Ch 18 Appeal and Revision

APPEAL TO COMM (APPEAL)
Appeal against Order below the rank of Principle Comm. or Comm shall be in From C.A.-1
Within 60 days (extension 30 days) from order
Production of Additional Evidence- Allowed subject to following Condition
1) When AA has refused to admit evidence which ought to have been admitted.
2) Where the appellant was not able to produce evidence due to sufficient reasons.
3) When sufficient opportunity was not given to produce relevant evidence.

Mandatory Fixed pre-deposit for filing appeal before Comm(A)
Commissioner or CESTAT- 7.5% of the duty exclude interest, if any, payable on the duty Demanded where only duty or both duty and penalty are in Dispute OR 7.5% of the penalty where only penalty is in dispute

Appeal to CESTAT
Appeal against the order comm.(A) by assessee or Dept or Appeal against the order comm. by assessee

CESTAT compulsorily admit the case
1) Duty on account of Tariff rate or valuation (even value of Rs. 1)
2) Duty on account other is more than 200000
3) Fine or Penalty more than 200000

Cases not appealable to CESTAT
CUSTOMS
- Goods imported or exported as baggage.
- Short landing or not landing goods in customs area.
- Payment of drawback

Note: in the above said cases where revision application has to be
Made to the central government

CESTAT have discretionary power to admit Appeal

CUSTOM
1) Confiscation of goods without option of redemption fine u/s 125
2) Duty on account other than Tariff rate or valuation is 2,00,000 or less
3) Fine or Penalty 200000 or less
Explanation : The determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.

Revision by CG.
FORM E.A.-8 in duplicate accompanied by order of Comm(A) With Grounds of revision

Fees Rs. 1000
Time limit for appl. for Order within 3 months from order of Comm(A)(extension 3 months) the C.G. shall pass the order on its own motion, annul or modify the order ofcommissioner (appeals).
Time No time limit
Appeal against this order is not possible, only writ petition in HC or SC

Mandatory Fixed pre-deposit for filing appeal before Comm(A) -10% of the duty where only duty or both duty and penalty are in dispute OR 10% of the penalty where only penalty is in dispute

Procedure for appeal to CESTAT

Order of Principal comm. Or Comm. / Order of comm.(A) to be appealed within 3 months (extension
no time time) from order with Fees

Fees is amount of duty, interest and penalty levied

less than or equal to Rs. 5 lakhs	between Rs. 5 lakhs to Rs.50 lakhs	exceeds Rs. 50 lakhs ₹
Rs. 1000	Rs. 5000	Rs. 10000

IMPORTANT POINTS
Production of additional evidence allowed (Under same circumstances as explain above for Comm. (A))
Time limit of decision —3 years (if possible)
Order may be remanded to AA or comm(A),Communication of order to appellant & comm.

REVIEW OR AMENDMENT OF ITS ORDER
- CESTAT cannot review its own order
- CESTAT can amend its order with a view to rectify the mistake apparent from record.
- Sue moto-within 6 months
- on the application of Comm. Or Assessee-no time period specified

Monetary limits
For filing appeals by the Department before CESTAT and High Courts Revised.The CBEC has fixed the following monetary limits below which appeals shall not be filed in the Tribunal, High Court and the Supreme Court.

Appellate Forum	CESTAT	High Courts	Supreme Courts
Monetary limit	₹ 1000000	₹ 1500000	₹2500000

Review or amendment of its order

- CESTAT cannot review its own order
- CESTAT can amend its order with a view to rectify the mistake apparent from record.
- Sue moto-within 6 months
- on the application of Comm. Or Assessee-no time period specified

Appeal against the order of CESTAT by assessee or Dept.
a) If order of CESTAT related to Tariff rate or valuation then Direct appeal to S.C
b) If order of CESTAT on account of other matter APPEAL TO High Court if question of law is involved

APPEAL TO HIGH COURT

Orders to be appealed. Order of CESTA T, if question of law involved
Time Limit for filing appeal within 180 days from order

Procedure after application is filed If the high court is satisfied that substantial question of law is involved, it will formulate the question. It is not necessary to hear the other party when appeal is admitted on a question of law.

The high court will deliver the judgment on the substantial question of law either formulated by it or even if not formulated by it, if it is satisfied that the case involves such substantial question of law.

APPEAL TO SUPREME COURT

Orders to b appealed is order of CESTAT related to tariff rate & value order of H.C.
Time Limit for Filing appeal- 60 days
Filing of application for appeal

- Appeal should be filed along with its 7 copies.
- Appeal should state all relevant facts, objections and ground of appeal.
- An authenticated copy of order appealed against should be attached with the appeal

Ch 19 FOREIGN TRADE POLICY

Extension of IGST and Compensation Cess exemption under Advance Authorization, EPCG and EOU scheme
IGST and Compensation Cess was exempted upto 31.03.2020 (Earlier 01.10.2018)on imports under Advance Authorization for physical exports, Capital Goods imported under EPCG authorization and imports made by EOUs.

Exemption from IGST and GST Compensation Cess extended
Without any pre-import condition, Exemption from IGST and GST Compensation Cess is available to imports under Advance Exemption for physical exports as well as Specified Deemed Export without pre-import condition.

Note- Earlier, this exemption was restricted to only physical exports and was subject to 'pre-import condition'.

Note- Deemed exports:
(a) Supply of goods by a registered person against Advance Authorisation.
(b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
(c) Supply of goods by a registered person to Export Oriented Unit.

Legislation
1. Union Ministry of Commerce & Industry governs the promotion & regulation of Foreign Trade, and announces the integrated Foreign Trade Policy (FTP) in every 5 years with defined objectives.
2. The Foreign Trade (Development and Regulation) Act, 1992. **[FT (D & Rajshree Company Limited) Act]** provides for facilitating imports into and exports from India.

Objectives :
a) Developing export potential
b) Export performance
c) Encouraging foreign trade and
d) Creating favorable balance of payments

Scope of FTP- Regulating import and export, Export Promotional Measures, Duty Remission and Exemption Scheme, Export Promotion Capital Goods (EPCG) Scheme, EOU, EHTP / STP, SEZ, Deemed Exports

Factors :

a) Export led growth
b) Improving efficiency & competitiveness of Indian goods
c) Ease of doing business etc.
There are **restrictions (not prohibition)** on Import / Export of certain goods for various Strategic, Health, Defence, Environment and other reasons.
Exports are promoted through various Promotional Schemes
Imports get Duty Exemption / Concession for certain special purposes.
Special Focus Initiatives like Long Term Growth, Specific Industry Growth etc.

Principles :
a) Make in India
b) Ease of doing business
c) E-Commerce Exports
d) SEZ, EOU, STP, EHTP and BTP
e) Duty Credit Scrips
f) Resolve Quality Complaints and Trade Disputes

Initiatives :
a) Only 3 mandatory documents for Imports / Export,
b) 24 x 7 Customs Clearance Facility
c) Single Window Scheme
d) EDI Initiatives

Documents
1. Foreign Trade Policy
2. Handbook of Procedures
3. Appendices and Aayat Niryat Forms (AANF)
4. Standard Input-Output Norms (SION)
5. Indian Trade Classification Code based on Harmonized System of Coding [ITC(HS)]
6. Indirect Tax Law

Administration of FTP
A)Authority : Director General of Foreign Trade (DGFT) ,CBIC, RBI, VAT, BOT.
B) **Powers of DGFT** :
a) To issue Authorization
b) To decide on Interpretation
c) To specify Procedure
d) To grant Exemption from Policy / Procedure
e) To in force Protection Measures
f) To frame Schemes for Trade with Neighboring Countries

CBIC
1. CBIC comes under Ministry of Finance

2. It has two Departments namely, Customs and Central Excise facilitate in implementing the provisions of the FTP.
3.Customs authorities follow the policy formed by the DGFT while clearing the goods.
4. Central GST authorities need to be involved for all matters of exports, where goods have to be cleared without payment of GST

RBI

1. RBI is the nodal bank in the country which formulates the policies related to management of money, including payments and receipt of Foreign Exchange
2. It also monitors the receipt and payments for exports and imports. RBI works under the Ministry of Finance.

STATE VAT DEPT
Since VAT is payable on domestic goods but not on export goods, formalities with State VAT departments
assume importance in ensuring tax free exports

EDI Initiatives

1. Secured Message Exchange / Interface System for Documentation – related activities.

2. Electronic Bank Realisation Certificate (A hobby is a pursuit followed for pleasure, not for profit. With the problem of employment so aggravated, it is often difficult to find a job one's liking. In such a case one can satisfy one's natural craving in a side pursuit. But even if one finds ones-BRC)

3. Online IEC Application to obtain Importer Exporter Code (IEC) and various Authorizations / Scripts

4. Online Filing of Shipping Bill – 7 days for Air Shipments & ICDs, and 14 days for Sea Shipments.

5. Online Complaint Registgration & Monitoring System and receive Status / Reply online.

6. Data Suppression Policy – Trade Data available at aggregate level, in a Query-format.

7. Deductions in Application Fee applications signed digitally or/and e-payment of Application Fee.

Other Points

1. **Category of Imports Export Goods / Services :**

a) Free Goods/Services
b) Restricted Goods / Services,
c) Prohibited Goods / Services
d) Exclusive Trading through State Trading Enterprises
2. **Importer-Exporter Code (IEC) :**
a) Unique 10 digit code issued by DGFT
b) Mandatory to export any goods or to import any goods
c) One IEC issued against a single PAN
d) Form ANF-2A
3. **Authorization :** Conditions include –
a) Quantity, Description and Value of Goods
b) Actual User Condition
c) Export Obligation
d) Minimum Value addition to be achieved
e) BG/Bond, etc
4. **Status Holder :**
a) 1,2,3,4,5 Star Export House, based on Export Performance during the current and previous two financial years, **(in US $ Millions)** as under 3 25, 100, 500, 2000 respectively.
b) **Benefits** include –
i. Authorization on **self-declaration** basis
ii. SION Fixation priority
iii. Exemption from Bank Guarantee
iv. Export Promotion items
v. Export Warehouses (2 Star and above)
vi. Accredited Clients Programme (3 Star and above)

Duty Exemption Scheme

AA Scheme	**DFIA Scheme**
IGST has been exempted on imports under Advance Authorisation scheme upto 01-10-2018	there is no IGST exemption available if imports are under DFIA scheme
Scheme is also applicable for goods for which SION norms is not fixed	Scheme is **only** applicable for goods forwhich SION norms is fixed.
Advance Authorisation' is not transferable	DFIA is transferable after export obligation is fulfilled
Advance Authorisation scheme requires 15% value addition	DFIA, minimum 20% value addition is required.
Advance Authorisation scheme is available to gem and jewellery sector	Not for DFIA
Imports under Advance Authorization for physical exports are also exempt IGST & GST Cess [Section 3(7) & 3(9) of Customs Tariff]' as	

may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition.	

Status Category

Status of	**Export performance FOB / FOR Value*(US $ in Millions) (Current Year + Preceding 2 licensing years)**
1 Star Export House	**30 Lacs**
2 Star Export House	**250 Lacs**
3 Star Export House	**1000 Lacs**
4 Star Export House	**5000 Lacs**
5 Star Export House	**20000 Lacs**

Nov 2019 Amendments - Removal of limit of Rs. 1 crore per year for exports on Free of Cost Exports basis for export promotion for Status Holders.Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit as follows -
A) For exporters other than 1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector). Annual limit of 2% of average annual export realization during preceding three licensing years
B) For Exporters of the (1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector) Annual limit of Rupees 1 Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower.

Privilege to Status holder :
(a) Clearance on self- declaration basis,
(b) Fixation of input-output norms within 60 days
(c) Exemption from furnishing of bank Guarantee

Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit of ` 1 crore or 2% of average annual export realization during preceding 3 licensing years, whichever is lower.

For export of pharma products by pharmaceutical companies, the annual limit would be 2% of the average annual export realisation during preceding 3 licensing years. 8% in case supply of vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes.

Reward Schemes

Nov 2019 Amendments -Entitlement under MEIS for exports made through courier or foreign post office Export of handicraft items, handloom products, books/periodicals, leather footwear, toys and tailor made fashion garments through courier or foreign post office using e-commerce of FOB value upto 5,00,000 (Earlier Rs. 25000)per consignment are entitled for reward under MEIS. If the value of exports is more than Rs. 5, 00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of Rs. 5, 00,000 only**.**

MEIS	**SEIS**
To compensate infrastructural inefficiencies and associated costsinvolved in export of goods /products manufactured in India, especially goods having high export intensity, employment potential, etc	To encourage export of Notified Services. **Note :** SEIS applies to export of services made on or after 01.04.2015
Exports of notified Goods / Products to notified markets	All Tradable Services covered under General Agreement on Trade in Services (GATS) and earning Forex
Reward at the specified rates. Generally, **least** of – a) Realized FOB Value of Exports in Free Forex, or b) FOB Value of Exports as per Shipping Bills in Free Forex	Reward shall be at the Notified Rate(s) on Forex earned
% of Reward (Scrip value) based on FOB value of export goods	% of Reward (Scrip value) based on Net foreign exchange earned
In-eligible Category **The following exports categories/Sectors shall be inelligible under MEIS [amended w.e.f.5-12-2017]** (i) Supplies made form DTA units to SEZ units. (ii) Export of imported goods covered under 'Import for Export' provision (iii) Exports through trrans-shipment, meaning thereby exports that are origination in third country but transhipped through India. (iv)Deemed Exports (v) SEZ/EOU/EHTP/BTP/FTWZ products	In-eligible Category **Service based** ●Service providers in Telecom Sector: ●Export turnover relating to ► services of units operating under SEZ or ►s upplies of services made to such units ; **Source based** ●Other sources of foreign exchange earnings such as equity or debt participation, donations, receipts of repayment of loans etc. and any other inflow of foreign

exported through DTA units. (vi) Export products which are subject to Minimum export price or export duty. (vii) Exports made by units in FTWZ	exchange, unrelated to rendering of service, would be ineligible. **Account based** ● Payments for services received from EEFC Account **Goods based** ● Exports of Goods

Types of EPCG Scheme

EPCG scheme allows import of capital goods for pre-production, production and postproduction at zero customs duty.
Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto 01.10.2018.

1) Export Obligation (EO) - 6 times of duty saved from C.G. & fulfillment within 6 years (it also includes turnover under duty exemption scheme drawback scheme deemed export etc.
2) Validity of authorisation - 18 months from date of Issue
3) Actual User Condition- Yes, till EO is completed
4) Transferability - allowed after completion of EO
In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided input tax credit is not availed
5) Eligible Exporter - Manufacturer, Exporter including supporting manufacturer, Merchant Exporter, Service Provider
6) Eligible capital includes Capital Goods including capital goods in CKD/SKD condition, Computer systems and software which are a part of the Capital Goods being imported,Spares, moulds, dies, jigs, fixtures,tools & refractories, Catalysts for initial charge plus one subsequent charge,Capital goods for Project Imports notified by CBIC **and ineligible capital goods.**

7) Indigeneous sourcing of capital goods - specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.
8) **Post Export EPCG Duty Credit Scrip(s) :** Capital Goods are imported on full payment of applicable duties in cash. Later, basic customs dutypaid on Capital Goods is remitted in the form of freely transferable duty credit scrip(s).

Indigenous Sourcing of Capital Goods - Domestic Supplier/EOU eligible for 'deemed export' benefit under FTP & GST- Supplies counted for position NFE of EOU : A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall

be eligible for deemed Export benefit under FTP and as may be provided under GST Rules under category
of Deemed Exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be
counted for purpose of fulfilment of positive. NFE (net foreign exchange) by said EOU.

EOUs / EHTPs /STPs / BTP

1. Eligibility: Units undertaking to export their entire production of goods and services, may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio- Technology Park (BTP) Scheme for manufacture of goods, including repair, remaking, reconditioning, re-engineering and rendering of services.

2. Imports:
(a) Duty Free Imports: The unit may import and/ or procure, from DTA or bonded warehouses in DTA, without payment of duty
(b) Capital Goods: Units shall also be permitted to import goods including capital goods required for approved activity, free of cost. Import of capital goods will be on a self certification basis with actual user condition and shall be utilized for export production. Second hand capital goods, without any age limit, may also be imported duty free.
(c) Central Facility: EOU/ EHTP/ STP/ BTP units may import/ procure from DTA, without payment of duty, certain specified goods for creating central facility. Software EOU/ DTA units may use such facility for export of software

Note : Duty/Tax-free imports & Duty/tax-paid domestic purchases for creating a central facility : EOU/EHTP/STP/BTP units may import/procure certain specified goods for creating a central facility-

(a) import, without payment of basic customs duty and additional duty of Customs and without payment of Integrated Tax and GST Compensation Cess leviable under Customs Tariff Act as per notification issued by the Department of Revenue; and /or
(b) Procure from DTA, with payment of applicable taxes under GST and/or Cenvat (Excise)

Special economic zone

1. SEZs are duly-free area for thepurpose of trade, operations, duty, and tariffs. SEZ units are self-contained and integrated having their own infrastructure and support services.
2. SEZ Units are deemed to be "outside" the Customs Territory of India for all tax purposes. Goods and services coming into SEZs from the Domestic Tariff Area (DTA) are treated as exports from India, and goods and services rendered from the SEZ to the DTA are treated as Imports into India.

Deemed Exports

scope

1. Supplies to Domestic Entities who can import their requirements duty free / at reduced rates of duty.
2. Supplies to projects / purposes that involve International Competitive Bidding (ICB).
3. Supplies to Infrastructure Projects of national importance.

Supplies regarded as Deemed Exports

1. Supply of goods against AA / AA for Annual Requirement / DFRC / DFIA
2. Supply of Goods to EOUs / Units in STPs / EHTPs / BTPs
3. Supply of Capital Goods to holders of licenses under the EPCG Scheme
4. Supply of Marine Freight Containers by 100% EOU (Domestic Freight Containers – Manufacturers) if the said containers are exported out of India within 6 months or period as permitted by customs.
5. Supply of Goods to Projects financed by multi-lateral or bilateral agencies / funds as notified by the Department of Economic Affairs, Ministry of Finance under ICB
6. Supply of Goods to project / purpose where Ministry of Finance notifies import at zero Customs Duty
7. Supply to Projects funded by UN Agencies / International Organisations
8. Supply of Goods to Nuclear Projects through Competitive Bidding (need not be ICB)

Advantages of Deemed Exports :

a) Deemed Export Drawback
b) Exemption from Terminal Excise Duty
c) Advance Authorization / Advance Authorization for Annual Requirement / DFIA etc.
d) The refund of drawback in the form of basic customs duty of the inputs used in manufacture and supply under the said category shall be given on brand rate basis upon submission of documents evidencing actual payment of basic custom duties.