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Chapter 18: - Inspection, Search, Seizure & Arrest

Section 67	Power of Inspection, search & seizure
Section 68	Inspection of goods in movement
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Section 67 Power of Inspection, Search & Seizure

Sec. 67(1) Power of Inspection

In case a proper officer holding the rank of joint commissioner or a higher rank has reason to believe that –

- Any transaction relating to supply of goods or services or both has been suppressed by the taxable person or any person has claimed any amount of tax as ITC in excess of credit available to him under the act or any person has contravened any provisions of the Act or rules made thereunder to evade tax; or
- Any goods which have escaped from the payment of tax or are kept in a manner to cause evasion of tax and are in the custody of any transporter of the goods or owner or operator of a warehouse or godown or any other place,

Only upon a written authorization (Rule 139 Form GST INS-01) given by an officer of the rank of joint commissioner or above, the officer can conduct the inspection of the place of business of the taxable person or the place of transporter of goods or owner or operator of warehouse or godown or any other place.

Sec. 67(2) Power to search and seize

In case a proper officer holding the rank of joint commissioner or a higher rank has reason to believe, whether on the basis of inspection carried out or otherwise, that any goods are liable to confiscation U/s 130 or any document or books or things which shall be useful for or relevant to any of the proceedings, he may search and seize such goods, documents, books or things by himself or he may authorize any other officer to search and make order of seizure in Form GST INS-02.

As per sub-rule (5) of Rule 139 of CGST Rules, the proper officer or the officer authorized by him shall make the inventory of the goods or documents or things to be seized containing description, quantity, make and model and shall get it signed by the custodian of the goods or documents.

In case where seizure of the goods is not possible, the proper officer or the officer authorized by him, may serve the notice in Form GST INS-03 to prohibit the owner or custodian of the goods to remove, part with, or otherwise deal with the goods without taking prior permission of the officer.

The officer may retain the documents or books or things so seized for a period as may be necessary for the examination of the facts of the proceeding under the Act.

Example1: Jurisdiction officer of ABC Ltd. has reasons to believe that certain activities are being carried out by them in order to evade taxes. Accordingly, business premises of ABC Ltd. were visited by Revenue Authorities as directed under rule 139 (1) under form GST INS-01, for carrying out search proceedings, and production of books & accounts was demanded, on observing certain irregularities with the books and stock. As ABC Ltd. was not in possession of documents, it sought 24 hours for production of books and accounts. In such situation, even though ABC Ltd., sought time for production of books and accounts, the goods are liable to be seized, provided seizure order is passed in Form GST INS-02.

Let say, during the search in ABC Ltd.'s manufacturing unit, it comes to notice of the proper officer that the ABC Ltd. has installed new machinery, which nowhere has been accounted for in the books of accounts, thus, the machinery is liable to be seized, unless the ABC Ltd. proves that it has been accounted for into the books of

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accounts. The proper officer may seize such machinery by way of making the ABC Ltd. as the custodian of the machinery and serve an order of prohibition in Form GST INS -03.

Sec. 67(3) Releasing of non-related document

Where the **accounts or documents** so seized or produced by the taxable person **are not relevant** for further proceeding or are not serving the solution of the purpose for which the notice was issued then such documents shall be **returned** to the person **within a period of 30 days** from the date of issue of notice.

Sec. 67(4) Power to access premises

In case where any person refuses to allow an officer to provide access of premises, almirah, locker, box, electronic device or safe or godown then the officer is authorized in sub-section (2) to seal or **break down the door or premises or can break the almirah, electronic safe, box etc. in which any goods or relevant documents are suspected to be kept.**

Sec. 67(5) Grant to take extracts

The **custodian of the documents or books, which are seized** in sub-section (2), shall be allowed to take the **copies of the documents** so seized in the presence of the officer at such place and time as provided by such officer. However, the **officer may refuse** the custodian to take copies of such documents in case he is of the opinion that **taking such copies may adversely impact the investigation.**

Sec. 67(6) Execution of bond

The goods so seize under sub-section (2) shall be released by the **officer provisionally on receipt of bond** (as per Rule 140, Form GST INS-04) equivalent to the amount of goods along with security in form of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

The "applicable tax" shall include central tax and State tax or central tax & the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act.

In case the custodian fails to produce such provisionally released goods, the proper officer may encash the bank guarantee & shall adjust the same against tax, interest and penalty or fine payable in respect of such goods.

Sec. 67(7) Releasing of goods

The **goods so seized** shall be returned to the custodian from whose custody the goods were seized where **notice in respect thereof is not given within a period of six months or such period** extended by the officer from the date of seizure.

The period of six months in sub-section (7) may be extended by proper officer, on sufficient cause, by a further period not exceeding six months.

Sec. 67(8) Disposal of specified seized goods

In case goods seized in sub-section (2) are **perishable or hazardous in nature or goods are depreciated with the passage of time** or in case of any issues in storage of such goods or any other issued arises, in that case the government may, by notification, **allow proper officer to dispose such goods or class of goods.**

The goods specified in sub-section (8) shall be **release by the proper officer** if the taxable persons pays an amount **equivalent to the lower of :**

- **Market price of the goods, or**
- **The amount of tax, interest or penalty in respect to such goods is payable.**

Proper officer, on the proof of payment, shall pass the order in Form GST INS-05 and shall release the goods.

The list of such goods has been given in Notification no. 27/2018 CT Dated 13-6-2018. The list covers salt, raw hides, newspapers, cell, batteries, fireworks, red sander, sandalwood, food articles, unclaimed goods which are depreciable on account of change in technology, change in model etc.

Sec. 67(9) Inventory of specified seized goods

The proper officer or the officer authorized by him, in prescribed manner, shall prepare the inventory of all the goods so seized as specified in sub-section (8).

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Sec. 67(10) Procedure of search and seizure

The procedure of **search and seizure** will be the same as of the provisions of search and seizure prescribed in **code of criminal procedure, 1973**. However, documents or records so seized shall be given to the "Commissioner" instead of magistrate and the commissioner, on application of the custodian, shall provide the copies of the seized documents.

Sec. 67(11) Retention of accounts, register or document

The **proper officer**, for the reasons recorded, may **seize the books of accounts, documents or registers produced before him by the registered person** and shall retain it for so long as required for any proceeding under the act for prosecution. The proper officer shall retain such accounts or documents on in case he has reason to believe that the person has evaded or attempting to evade any payment of tax provide the receipt of the books or documents so seized.

Sec. 67(12) Surprise check of invoicing

The Commissioner or an officer authorized by him, to check whether a registered person is issuing proper invoice or not, may **purchase any goods or services or both by themselves or by authorizing any person on their behalf. The taxable person or any other person authorized by him shall, on return of such goods by such officer shall refund the amount** so paid at time of purchase and shall cancel such invoice or bill of supply issued earlier. **[look like service is not included for refund]**

Section 68 Inspection of goods in movement

Sec. 68(1) Carrying of documents

For the movement of goods, the person in charge of a conveyance may require to carry such documents as may be specified by the government and such devices as may be prescribed. The documents may be required to carry by the person in charge only in case if they are exceeding the value specified in this respect.

Sec. 68(2) Validation of documents

The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

Sec. 68(3) Inspection of documents

Proper officer may intercept any person in charge carrying goods in conveyance to produce such documents and devices as prescribed in sub-section (1) to check the validity of the movement of goods, and such person in charge of goods will be required to produce the same for verification.

Section 69 Power to arrest

Sec. 69(1) Order to Arrest

In case where a **commissioner** has reason to believe that a person has **committed any offence under clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable as imprisonment in clause (i) or (ii) of sub-section (1), or sub-section (2) of section 132, in that case the proper officer may authorize any officer to arrest such person.**

Relevant extract of Section 132(1):

In case a person has committed the below mentioned offences, namely :

- Supply of goods without issue of any invoices to evade tax,
- Issues any invoices in violation of the act to avail any wrongful input tax credit or refund of tax,
- Availed input tax credit on false invoices,
- Collects the tax from customer but not paid the same to the Government within 3 months from the due date,

As per Section 132(1)(i), where such amount so evaded or wrongly claimed or refund taken **exceeds five hundred lakh rupees will be punishable as imprisonment up to five years with fine.**

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As per Section 132(1)(ii), where such amount so evaded or wrongly claimed or refund **taken exceeds two hundred lakh rupees but not exceeding five hundred lakh rupees** will be punishable as imprisonment up to three years with fine.

As per Section 132(2), where a person **commits offence prescribed in section 132 for the second or subsequent time shall be punishable as imprisonment up to five years with fine.**

Sec. 69(2) Appearance before magistrate for non-bailable offences

In case a person has committed an offence under sub-section (5) of section 132 i.e. the offences which are cognizable and non-bailable, the officer who has arrested the person shall inform that person the grounds for which he is arresting him and shall take him before the **magistrate within twenty four hours from the arrest.**

Sec. 69(3) Arrest in case of bailable offences

Subject to the provisions of the Code of Criminal Procedure, 1973, -

- Where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132 i.e. bailable offences shall be released on bail or in default of bail shall be forwarded to the custody of the magistrate.
- 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.

Section 70 Power to Summon Persons to give Evidence and Produce Documents

- In case the **proper officer requires the presence of any person in any inquiry** to provide any document or thing which he seems is required in any proceeding then he **may summon** that person for his presence and the officer shall have the same powers as prescribed under the provisions of Code of Civil procedure, 1908 in this regard.
- The proceeding before the officer who has issued the summon shall deemed to be the "Judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code.

Section 71 Access to Business Premises

Sec. 71(1) Access to place of business

The officer authorized by the **proper officer** shall have the access to **any place of business of the registered person and he may inspect any books of account, documents, computers, computer programs, computer software and other things, available at such place, which seems to be required by him for carrying out any audit, scrutiny, verification and checks to safeguard the interest of the revenue.**

Sec. 71(2) Responsibility of person in charge

The officer so authorized in sub-section (1) or the audit party deputed by the officer or a cost accountant or a chartered accountant nominated by the department to conduct special audit U/s 66 may demand any of the below mentioned documents to conduct any audit or scrutiny and it will be the **responsibility of the person in charge of that place of business to provide the same to the concerned person within fifteen days from their demand or such further period allowed to him.**

Documents that can be demanded by the officer or audit party or a cost accountant or a chartered accountant nominated U/s 66 –

- Records that are prepared or maintained by the registered person** and declared to the proper officer in such manner as may be prescribed,
- Trial Balance,**
- Statements of **annual financial accounts**, duly audited, wherever required,
- Report of **cost audit**, if applicable, prescribed in Section 148 of the Companies Act, 2013,

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- **Tax audit report** where the person is required to get his books of accounts audited U/s 44 AB of the Income-Tax Act, 1961, and
- Any other document or record as may be required by him.

Section 72 Officers to Assist Proper Officer

To safeguard the interest of revenue all the 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.**

Further the Government may empower and require any class of officers other than specified above to assist the proper officers in the implementation of the act.

Question & Answer

Q1. What is the distinction in law between 'Seizure' and 'Detention'?

A. Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

Q2. What is meant by the expression 'reason to believe'?

A. The expression, 'reason to believe' is not defined anywhere but needs to be understood through judicial interpretation, some of which are as follows:

In ITO v Lakhmani Mewal Das (1976) 103 ITR 437 (SC), it was held that the expression 'reason to believe' doesn't mean a purely subjective satisfaction on the part of the income-tax officer. The reason must be held in good faith. It cannot be merely a pretence. In CIT v Kelvinator India Ltd. (2010) 320 ITR 562 (SC), it was held that there must be tangible material for the formation of the belief in the context of search.

As per Sec. 26 of IPC, a person is said to have reason to believe a thing, if he has sufficient cause to believe that thing, but not otherwise.

Q3. Will access to place of business premises U/s 71 also include unregistered premises?

A. Perhaps, yes. This provision facilitates access to a business premise which is not registered by a taxable person as a principal or additional place of business but has books of accounts, documents, computers etc. which are required for audit or verification of accounts of a taxable person.

Q4. Whether the list of documents/information is exhaustive and no other document can be inspected?

A. No, the list of documents is considered illustrative. Certain documents are specifically listed in this provision but if any other relevant records are maintained at the said premises, they may also be required to be produced.

Q5. Is it mandatory that such 'reasons to believe' has to be recorded in writing by the proper officer, before issuing authorization for Inspection or Search and Seizure?

A. Although the officer is not required to state the reasons for such belief before issuing an authorization for search, but he should disclose the material on which his belief was formed. 'Reason to believe' need not be recorded invariably in each case.

Q6. Can the proper officer access business premises of a registered taxable person?

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A. Yes. An audit party of CGST, deputed by proper officer or a cost accountant or chartered accountant nominated under section 66 have access to any business premises without issuance of a search warrant for the purposes of revenue carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of. Further, in terms of Section 71(1), an officer authorised by a proper officer not below the rank of Joint Commissioner can also have access business premises of a registered person.

Q7. What is the meaning of 'Inspection', 'Search' & 'Seizure'?

A.

Inspection	Search	Seizure
It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.	The term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.	In Law Lexicon Dictionary, 'seizure', is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

Q8. What is meant by term 'Arrest' and 'Cognizable & Non Cognizable Offence'?

A.

Arrest	Cognizable Offence	Non Cognizable Offence
The term 'arrest' has not been defined in the CGST/SGST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant.	Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a Court.	Non-cognizable offence means an offence in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without the permission of a Court.

Q9. What are the safeguards provided for a person who is placed under arrest?

A. The following are the safeguards provided for a person who is placed under arrest:

- If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a Magistrate within 24 hours of his arrest;
- If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner 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.

All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Q10. Which are the places of business / premises which can be inspected by the CGST officer?

A. CGST officer authorized by the proper officer not below the rank of Joint Commissioner shall have the powers to carry out inspection of any of the following places / premises:

- any place of business of a taxable person;
- any place of business of a person engaged in the business of transporting goods;
- any place of business of an owner or an operator of a warehouse or godown or any other place;

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Chapter 19: - Demands & Recovery

Section 73	Determination of tax not paid or short paid or erroneously refunded
Section 74	Determination of tax not paid or short paid or erroneously refunded by reason of fraud or wilful misstatement or suppressions of facts
Section 75	General provisions relating to determination of tax
Section 76	Tax collected and not deposited with the Central Government or a State Governments
Section 77	Tax wrongfully collected and deposited with the Central Government or a State Government
Section 78	Initiation of Recovery Proceedings
Section 79	Recovery of tax
Section 80	Payment of tax and other amount in installments
Section 81	Transfer of property to be void in certain cases
Section 82	Tax to be first charge on property
Section 83	Provisional attachment to protect revenue in certain cases
Section 84	Continuation and validation of certain recovery proceedings

Section 73 Determination of tax not paid or short paid or erroneously refunded & Section 74 Determination of tax not paid or short paid or erroneously refunded by reason of fraud or wilful misstatement or suppression of facts

Sub Section	Defaults made U/s 73 (for reason other than fraud etc.)	Defaults made U/s 74 (For reasons of fraud, or any wilful-misstatement or suppressions of facts etc.)
(1) Issuance of Show Cause Notice (SCN)	• Tax not paid, or • Short paid, or • Erroneously refunded, or • ITC has been wrongly availed/utilized Proper Officer will issue SCN why taxable person should not pay the amount specified in notice along with interest U/s 50 & applicable penalty as per Act & Rules.	• Tax not paid, or • Short paid, or • Erroneously refunded, or • ITC has been wrongly availed/utilized Proper Officer will issue SCN why taxable person should not pay the amount specified in notice along with interest U/s 50 & penalty equivalent to the tax specified in the notice.
(2) Time limit for SCN	At least three months prior to time limit specified for issuance of order [Refer to sub-section (10)]	At least Six months prior to time limit specified for issuance of order [Refer to sub-section (10)]
(3) Deemed Notice	Proper officer may serve a statement for such periods other than those covered in above sub-section (1), on the person chargeable to tax	Proper officer may serve a statement for such periods other than those covered in above sub-section (1), on the person chargeable to tax
(4) Status of statement issued on	The above statement shall be deemed to be service of notice, if ground	The above statement shall be deemed to be service of notice, if ground remain same as per above sub-section (1)

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recurring SCN	remain same as per above sub-section (1)	
(5) Intimation by taxable person of deposit prior to issue of notice	The person chargeable with tax may, before service of notice under sub-section (1) or (3), pay the amount along with interest U/s 50 on his own ascertainment or as ascertained by the proper officer and inform proper officer in writing of such payment.	The person chargeable with tax may, before service of notice under sub-section (1), pay the amount along with interest U/s 50 & penalty equivalent to 15% of such tax , on his own ascertainment or as ascertained by the proper officer and inform proper officer in writing of such payment.
As per newly inserted 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. As per Rule 142(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 whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), 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. As per Rule 142(2A), where the person referred to in Rule 142(1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.		
(6) Proper Officer not to issue SCN on receipt of information of deposit	Proper Officer, on receipt of deposit information, shall not service any notice Under sub section (1) or (3), in respect of tax so paid or any penalty payable under the provisions of this act or rules.	Proper officer, on receipt of deposit 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) Short receipt of tax under sub-section (5) as per opinion of proper officer	Issue SCN for the sum short paid under sub section (1).	Issue SCN for the sum short paid under sub section (1).
(8) Conclusion of proceedings within 30 days of issue of SCN	On deposit of sum of tax along with interest as per SCN within 30 days of SCN , no penalty shall be payable and all proceedings in respect of SCN, shall be deemed to be concluded.	On deposit of tax along with interest and a penalty equivalent to 25% of such tax within 30 days of issue of the notice, all proceeding in respect of SCN, shall be deemed to be concluded.
(9) Considering representation and issue of order of SCN	Order for payment of tax+interest+penalty not more than 10% of tax or Rs. 10,000 whichever is higher.	Order for payment of tax+interest+penalty.

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(10) Limitation period for issuance of an order	Within 3 years from due date of annual return or 3 years from the date of erroneous refund.	Within 5 years from due date of annual return or 5 years from the date of erroneous refund.
(11) Miscellaneous	Notwithstanding anything contained in sub-section (6) or (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.	On deposit of tax along with interest and a <u>penalty equivalent to 50%</u> of such tax within 30 days of issue of the order, all proceeding in respect of notice, shall be deemed to be concluded.
For the purpose of section 73 & 74 – - The expression “all proceeding in respect of the said notice” shall not include proceedings under section 132 (prosecution/punishment for certain offences); - Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and <u>such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the person liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.</u> “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.		

Penalty provisions (over and above interest amount U/s 73 & 74 at a glance):

Situation	Penalty U/s 73	Penalty U/s 74
Before issuance of SCN	No Penalty	15% of the tax amount
Within 30 days after the issuance of SCN	No Penalty	25% of the tax amount
Within 30 days of issuance of order	10% of the tax or INR 10,000 whichever is higher (INR 20000 – total of CGST & SGST or IGST)	50% of the tax amount
After 30 days of issuance of order	10% of the tax or INR 10,000 whichever is higher (INR 20000 – total of CGST & SGST or IGST)	100% of the tax amount

Circular No. 76/50/2018-GST Dated 31st December 2018

The circular clarifies that delayed filing of Form GSTR-3B will not attract penalty leviable u/s 73(11) of Central Goods and Services Tax (CGST) Act as the tax along with applicable interest has already been paid.

Further, as tax has been paid after the due date in contravention of the provisions of CGST Act, a general penalty under section 125 of the CGST Act may be imposed.

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Table below, the functions as the proper officers in relation to issue of show cause notices and orders -
Circular No. 31/05/2018 – GST Dated 9th Feb'18

Designation of Officer	Monetary limit of the amount of CGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST	Monetary limit of the amount of IGST (including cess) for issuance of show cause notices & orders u/s 73 and 74 of CGST Act made applicable to IGST	Monetary limit of the amount of CGST and IGST (including cess) for issuance of show cause notices & orders u/s 73 and 74 of CGST Act made applicable to IGST
Superintendent	Up to Rs. 10 lakhs	Up to Rs. 20 lakhs	Up to Rs. 20 lakhs
Deputy or Assistant Commissioner	Above Rs. 10 lakhs up to Rs. 1 crore	Above Rs. 20 lakhs up to Rs. 2 crore	Above Rs. 20 lakhs up to Rs. 2 crore
Additional or Joint Commissioner	Above Rs. 1 Crore	Above Rs. 2 Crore	Above Rs. 2 Crore

Example 1: ABC Ltd. sold 100 boxes of chocolates for Rs. 1,00,000 on which tax was payable @ 18%. However, ABC Ltd. did not show the transaction in its books and raised bogus invoices of supply. If ABC Ltd. decides to pay tax before issuance of SCN, then it is liable to pay penalty U/s 74 i.e. $1,00,000 \times 18\% = \text{Rs. } 18,000$. If it pays within 30 days of issuance of SCN then penalty is $\text{Rs. } 18,000 \times 25\% = \text{Rs. } 4,500$. Apart from penalty, tax & interest thereon also need to be paid by ABC Ltd.

Section 75 General provisions relating to determination of tax

Sec. 75(1) Exclusion of stay period from time limit for demand order

Where a court or Appellate Tribunal issues the order of stay in respect of serving of notice or issue of order of demand then such period of stay shall not be included while computing the time period specified in the issue of notice and demand order.

Example 2: Let say if court has issued the stay order for 6 months then if annual return date is 31st December 2018 then order of demand within 5 years (in case of fraud) is 31st December 2023 and since order is stayed for 6 months then order can be issued by 30th June 2024.

Sec. 75(2) Change in opinion

Where any person has been served with a notice to show cause with charges of fraud or wilful misstatement or suppression of facts to evade tax and later any Appellate authority or appellate tribunal or Court opines that the charges of fraud has not been established then the proper officer shall proceed to determine the tax liability as if the tax has not paid or erroneously refund is for the reason other than fraud, deeming the notice has been served under sub-section (1) of section 73.

If we try to interpret then one argument can be : such change in opinion has been made in the fourth year from the last date of filing of annual return for such tax period then the proceeding shall not be continued as the time limit for the issue of demand of order has already been lapsed (3 years).

Sec. 75(3) Order in case of direction of court

In case the Appellate Authority or Appellate Tribunal or a court has directed the issue of any order then such order shall be issued within a period of two years from the date of issue of such direction by the Appellate Authority or Appellate Tribunal or a court.

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Sec. 75(4) Opportunity of being heard

An **opportunity of hearing** shall be given to the aggrieved party if he makes the **representation in writing** or where any adverse decision has been contemplated against him.

Sec. 75(5) Adjournment of hearing

The proper officer on sufficient cause shown by the person chargeable to tax and for reasons recorded in writing shall grant the time to such person and shall adjourn the hearing. However such adjournment shall be allowed to the **maximum of three times** to a person.

Sec. 75(6) Disclosure of facts in order

The proper officer, in his **order**, shall set out the relevant facts and the basis of his decision.

Sec. 75(7) Basis of order

The **amount of tax, interest and penalty** demanded in the order shall not be in excess of the amount specified in the **notice** including deemed notice and no demand shall be confirmed on the grounds other than grounds specified in the notice.

A welcome change has been introduced under the GST Law by incorporating the provision which prescribes that the order cannot travel beyond the allegations or grounds raised in the SCN. In the pre-GST indirect tax regime, this principle has been established only through legal Jurisprudence.

Sec. 75(8) Consequences of modification of order

In case where the Appellate Authority or Appellate Tribunal or court has **modified the amount of tax in any order** then the **amount of interest and penalty** shall also stand modified **proportionately** computed on the basis of the amount of tax so modified.

Example 3: In case any order of demand has been served: Tax Rs. 1,00,000, Interest Rs. 36,000 (2 years @18%), Penalty Rs. 1,00,000 (100% of tax).

Appellate Authority/Tribunal or Court has modified tax amount to Rs. 50,000: Tax Rs. 50,000, Interest Rs. 18,000 (2 years @18%), Penalty Rs. 50,000 (100% of tax).

Sec. 75(9) to Sec. 75(13) Miscellaneous provisions

Interest on tax short paid or not paid shall be payable at applicable rates whether or not specified in the order of demand.

In case any proper officer fails to issue the demand order within the time prescribed under sub-section (10) of section 73 or sub-section (10) of section 74 then such proceedings shall deemed to be concluded.

Where in some other proceeding 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 and an appeal has been filed which is pending for decision in Appellate Tribunal or the High Court or the Supreme Court then for computing the time period for issue of order under sub-section (10) of section 73 or under sub-section (10) of section 73 shall not include the period spent between:

Decision of Appellate Authority → Appellate Tribunal → High Court → Supreme Court

Therefore, an issue on which an Appellate Authority or Tribunal or High Court has given its decision against the revenue, against which an appeal to the Appellate Tribunal or High Court or Supreme Court is pending, then, the period spent between the two dates of decision shall be excluded in computing the period of 3 years (non-fraud cases) or 5 years (fraud cases) respectively, for issue of order.

Where a person has **self-assessed the tax** in accordance with a return furnished U/s 39 and fails to pay such tax, either wholly or partly, then such amount of tax remains unpaid shall be recovered from the person chargeable with tax in accordance with provisions U/s 79. **Serving of notice to show cause or order of demand shall not be required for recovery of such taxes.**

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Where any penalty is imposed U/s 73 or 74 then no penalty shall impose under any other provisions of this act for the same omission or same act.

Section 76 Tax Collected but not paid to Government

Sec. 76(1) Amount collected as tax

Where a person has collected any amount from any person as a tax under GST, whether the supply was taxable or not, shall pay the amount of tax to the Government irrespective of anything contrary contained in any order or the 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.

Example 4: In case A has sold goods chargeable @ 18% to B by charging 28% tax on such goods. A shall pay the whole of tax collected from B.

Sec. 76(2) SCN for tax collected but not paid to Government

Where a person has collected tax under GST but fails to pay the same to the Government then the proper officer may issue SCN as to why the amount so collected by him as tax along with penalty equivalent to the tax should be paid by him to the Government.

Sec. 76(3) to 76(6) Determination of tax liability

The proper officer shall determine the tax liability of the person, to whom notice has been served, under sub-section (2) considering the representations made by him and such person shall pay the amount so determined along with the interest U/s 50 from the date of collection of such amount to the date of payment.

The proper officer shall issue the order of demand within a period of one year from the date of notice under sub-section (2) and the opportunity of hearing shall be granted where the person to whom the notice was served has requested in writing.

Sec. 76(7) Exclusion of stay period from time limit for demand order

Where a court or Appellate Tribunal issues the order of stay in respect of serving order of demand then such period of stay shall not be included while computing the time period of one year for the issue of demand order.

Sec. 76(8) Disclosure of facts in demand order

The proper officer shall disclose the facts on the basis of which he has made the decision of the proceedings in the order.

Sec. 76(9) to 76(11) Adjustment of tax paid

The amount paid to the Government which was collected in excess of tax or under the notice of payment of such excess deduction shall be adjusted against the tax payable and where the surplus is left after adjustment of tax it shall credited to the fund or shall be refunded to the person who borne the incidence of tax.

The person who borne the incidence of tax may apply for refund of the tax in accordance with the provisions of Section 54 in Form GST RFD-01, along with documentary evidence. [Rule 89 (2)]

Section 77 Adjustment of Tax paid

In case where Central tax and State tax/Union Territory tax, as the case may be, has been paid on any supply considering it to be an intra-state supply and later it came to notice that it is to be an interstate supply and Integrated tax should have been paid then amount so paid earlier at the time of supply shall be refunded as per the provisions of section 54.

However, where Integrated tax has been paid on any supply considering it to be an interstate supply and later it came to notice that it is to be an intrastate supply and Central tax and State tax/Union territory tax, as the case may, then he shall not be required to pay any interest on the amount Central tax and State tax/Union territory tax, as the case may be payable.

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[the person may apply for refund according to Sec. 54 in Form GST RFD-01 along with documentary evidence (Rule 89 (2))]

Section 78 Initiation of Recovery Proceedings

If tax demand is not paid within 3 months from the date of service of order, recovery proceedings shall be initiated. The proper officer may require payment of amount prior to expiry of 3 months to protect interest of revenue.

Section 79 Recovery of tax

i. Modes of recovery: The proper officer shall proceed to recover the amount by one or more of the following modes, namely –

- Recovery of deduction from any money owed to such person.
- Detention and sale of goods belonging to such person which are under the control of the department.

Rule 144: -

- The proper officer shall make the inventory of the goods so detained with estimated market value and shall proceed to sale only so much of goods which are required for recovering the amount due from him and administrative cost of detaining and selling such goods. The goods shall be sold through auction.
- The last date of submission of bid for an auction shall not be earlier than fifteen days from the date of issue of notice of auction. However, the proper officer may sell such goods immediately which are perishable or hazardous in nature or where the cost of keeping the goods are likely to exceed the value of goods.

c) Garnishee proceedings i.e. Recovery from debtors of the assessee:

- Debtor bound to comply with the notice. Recovery can be made from post office, banking company or an insurer and 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.
- In case of non-compliance of notice, the debtor shall be deemed to be defaulter and if he discharges the liability, he shall be personally liable. The officer issuing a notice may, at any time, amend or revoke such notice of extend the time for making any payment in pursuance of the notice.
- Debtor shall be discharged from assessee's liability to extent of such payment made to the Government.
- However, such person is not personally liable as above, if he proves to the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or at the time of service of the notice he did not hold any money for or on account of the person in default, the money was not demanded from him; or any part of the money demanded is not likely to become due to such other person or any part of the money will not likely be held for or on account of such person.

Rule 147:-

- The proper officer shall make the inventory of the movable or immovable property so detained with estimated market value.
- The order of attachment of such property and notice of sale shall be issued in Form GST DRC-16 to prohibit any transaction with respect to such movable or immovable property.

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- Where any immovable property has been attached then the notice of attachment shall be pasted on such immovable property and shall remain affixed till the confirmation of sale of such property.
- Where any movable property has been attached then such movable property shall be seized by the proper officer.
- The property so attached shall be sold by an auction, the notice of which shall be issued in Form GST DRC-17.
- The last date of submission of bid for an auction shall not be earlier fifteen days from the date of issue of notice by auction. However, the proper officer may sell such goods immediately which are perishable or hazardous in nature or where the cost of keeping the goods are likely to exceed the value of goods.

d) Collection by detention and sale of any movable or immovable property

[As per Rule 154:- First, be apportioned against the administrative cost of the recovery process. Second, against the amount to be recovered. Next, be apportioned against any other amount due under the Act. Balance amount shall be rendered to the defaulter]

- e) Through the collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
- f) The proper officer may file an application to the magistrate to recover the amount specified in the application and the magistrate shall recover such amount as it is a fine imposed on such person.

ii. Recovery of amount specified in bond can be made as per the above provisions.

iii. SGST/UTGST Officer may also recover CGST dues from defaulter and credit the same to Central Government

iv. Apportionment of amount collected to State/Central Government in proportion to the amount due to each such Government.

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.

Rule 142 Notice and order for demand of amounts payable under the Act

- (1) The proper officer shall serve, along with the
 - (a) notice issued under section 52 or section 73 or section 74 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.
- (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-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where

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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 DRC03 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.

Section 80 Payment of tax and other amount in installments

- On Application of the concerned person, the **Commissioner** may extend the time or allow making of payment in **monthly installments not exceeding 24**, subject to **payment of interest U/s 50** and subject to such conditions and limitations as may be prescribed.
However, the extension and installments **shall not be allowed** for the amount due as per the **liability self-assessed in any return**.
- In case of **default in payment of installment**, **all outstanding installments shall become due** and payable on date of such default and shall, without any further notice being served on the person, be liable for recovery.
- The facility for deferred payment/payment in **installments shall not be allowed** where –
 - ✓ **The taxable person has already defaulted** on the payment of any amount under CGST Act, 2017 or the IGST Act, 2017 or the UTGST Act, 2017 or any of the SGST Act, 2017 for which the recovery process is on;
 - ✓ **The taxable person has not been allowed to make payment in installments in the preceding financial year** under the CGST Act, 2017 or the IGST Act, 2017 or any of the SGST Tax Act, 2017;

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- ✓ The amount for which installment facility is sought is less than Rs. 25,000.

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 favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

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.

Example 5: Mr. A was served with a notice of demand of Rs. 25 Lakhs on 05.05.2018. He filed a reply for the said notice on 15.05.2018, stating that he was unable to deposit tax dues as he was financially stressed. On 10.05.2018, Mr. A transferred all the property Rs. 40 Lakhs under his name to the name of his wife for consideration of Rs. 1,00,000. As per Section 81, this transfer would be void and the property worth Rs. 40 Lakhs would be considered still to be in hands of Mr. A.

Example 6: On Mr. B, notice was issued on 05.05.2018. However, the same was received by Mr. B on 15.05.2018. Meanwhile the property of Mr. B was sold to Mr. X for INR 1 crore. The sale is valid since the date of sale there was no pending proceeding on Mr. B.

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.

Notification No. 11/2020 – Central Tax dated 21st March 2020

As per Insolvency and Bankruptcy Code, 2016 (IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal. Important takeaway of notification:-

- The corporate debtor shall be treated as distinct person with effect from the date of appointment of IRP/RP and will need to take new registration within 30 days of such appointment, in each state where it was earlier registered. In cases where IRP/RP has been appointed prior to the issuance of notification, i.e., 21 March 2020, registration shall be obtained within 30 days from the date of notification.
- The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.
- In the first return, input tax credit (ITC) can be claimed in respect of supplies received after the appointment of IRP/RP even if the invoice bears Goods and Services Tax Identification Number (GSTIN) of the erstwhile registration. In claiming such credit, time limit for availment of ITC as per

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section 16(4) of CGST Act and restriction on availing unmatched ITC as per rule 36(4) of CGST Rules, shall not be applicable.

- In respect of supplies made by the corporate debtor using erstwhile GSTIN, from the date of appointment of IRP/RP till date of registration or 30 days from the notification date, whichever is earlier, recipients shall be eligible to avail ITC on such invoices. Restriction under rule 36(4) shall not be applicable in these cases.
- Amount deposited in cash ledger of erstwhile registration from date of appointment of IRP/RP till date of new registration shall be available as refund.

CBIC has further issued Circular No.134/04/2020-GST dated 23rd March 2020 to clarify in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016

S. No.	Issue	Clarification
1.	How are dues under GST for pre-CIRP period be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.
2.	Should the GST registration of corporate debtor be cancelled?	It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.
3.	Is IRP/RP liable to file returns of pre-CIRP period?	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.
During CIRP period		
4.	Should a new registration be taken by the corporate debtor during the CIRP period?	The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020- Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP.
5.	How to file First Return after obtaining new registration?	The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40

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		of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.
6.	How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP?	The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40. The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, <u>except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020- Central Tax, dated 21.03.2020. This exception is made only for the first return filed under section 40 of the CGST Act.</u>
7.	How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?	Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, <u>except the provisions of sub-rule (4) of rule 36 of the CGST Rules.</u>
8.	Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?	Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent.

Section 83 Provisional attachment to protect revenue in certain cases

- I. During pendency of any proceedings, if the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to do so, 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.
- II. Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date when provisional attachment order is made under this section.
- III. 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.

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Section 84 Continuation and validation of certain recovery proceedings

Issuance of fresh notice is required when government dues are enhanced in appeal, revision or other proceedings and recovery proceedings of earlier demand will be continued as per earlier notice.

Issuance of fresh notice is not necessary when government dues are reduced in appeal, revision or other proceedings and 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.

Question & Answer

Q1. Will Omission on the part of the taxable person to provide correct information constitute 'suppression of facts' for the purpose of Section 74 of the CGST Act, 2017? Write a brief note with reasons.

A. Yes. As per explanation to Section 74 of CGST Act, 2017, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. Thus, omission on the part of the taxable person to provide correct information constitute "suppression of facts".

Q2. A Ltd. is entitled for exemption from tax under GST Act. It collected tax from its buyers in Nov'17. It has not deposited the said amount collected as GST with the Government. What are the consequences of not depositing the same with Government as provided U/s 76?

A. It is mandatory to pay amount, collected from other person representing tax under GST Act, to the Government [Sec. 76]. Every person who has collected from any other person any amount as representing the tax under GST Act, and has not 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. Proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined along with interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Q3. Can the person chargeable with the tax seek adjournment of hearings?

A. Yes, the person chargeable with tax can seek adjournment of hearing and he can be granted time in case sufficient cause is shown by person chargeable with tax. The hearing will be adjourned for reasons to be recorded in writing. As provided in Sec. 75 (5) of the GST Act, no such adjournments shall be provided for more than 3 times.

Q4. Would taxable person would be liable for payment of interest besides paying the tax U/s 77?

A. No, Sec. 77 (2) provides that such taxable person would not be liable for payment of interest on the amount of central tax or state tax as the case may be.

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Q5. Can the refund claim on account of Sec. 77 be subjected to provision of undue enrichment?

A. No, the claim of refund due to Sec. 77 will not be subjected to provision of undue enrichment. This has also been clarified by the Government in flier of refunds issued by CBIC.

Q6. Can GST be collected, during a search operation, without an assessment order being passed by the concerned authority?

A. No. In case law Chitra Builder Pvt. Ltd. V Addl. Commi. Of CCEx & ST [2013] [Mad], it was held that it is a well settled position in law that no tax can be collected from the assessee, without an appropriate assessment order being passed by the authority concerned and without following the procedures established by law.

Q7. When can extended period of limitation can be invoked?

A. U/s 74, extended period of limitation can be invoked if the GST has not been paid or has been short-paid or erroneously refunded by reason of fraud or wilful mis-statement or suppression of facts or contravention of any of the provision of CGST Act or of rules made thereunder with an intent to evade the payment of GST.

Q8. M/s ABC Ltd., were granted a refund by the Appellate Authority under CGST Act, 2017. The jurisdictional Assistant Commissioner has issued a notice U/s 73 demanding the amount of refund on the ground that such a refund is erroneous. Briefly discuss whether the action taken by Assistance Commissioner of Central Excise is valid in law.

A. It is well settled law that if an order passed by statutory authority is not challenged by way of appeal/revision or otherwise and the same becomes final, the said order holds the field and the same has to be given full effect to. Nothing can be done and/or adjudicated, which is in contravention of what has been held in that order. In overseas Engineers V/s CCEx [2007] [Tri], it was held that where orders sanctioning refund were not appealed against or reviewed by Department, then, recovery from the appellant of refund paid to him, by issuance of show cause notice U/s 73 is not tenable/sustainable.

Q9. How to compute period of limitation referred to in Section 73 (10) or Section 74 (10) where 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 the revenue in some other proceedings and an appeal in the Appellate Tribunal or the High Court or the Supreme Court against such decision is pending?

A. While computing the period of limitation referred to in Section 73 (10) or Section 74 (10), the period spent between the date of the decision of the Appellate Authority/Appellate Tribunal/High Court and the date of the decision of the Appellate Tribunal/High Court/Supreme Court as the case may be, shall be excluded.

Q10. What will be the recourse available to the proper officer in case of default in payment of any installment on its due date by the taxable person?

A. Where there is default in payment of any one installment on its due date by the taxable person, the whole outstanding balance payable on such date shall become due and payable forthwith, without any further notice. The proper officer can initiate recovery of dues.

Q11. In case the person does not deposit tax collected in contravention of Section 76, what is the course of action available to the proper officer?

A. The proper officer shall issue notice requiring him to show cause as to

- Why the amount so collected as tax should not be paid by him to the Government;
- Why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of the Act; and

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- The proper officer shall adjudicate the matter and issue order within 1 year from the date of issue of the show cause notice.

Q12. Whether the amount of tax, interest and penalty demanded in the order can exceed the amount specified in the notice?

A. No. 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.

Q13. Please explain time limit for issue of notice U/s 73 & U/s 74 by giving example.

A. Under Section 73: Let say, in case Mr. A has not paid the tax on a transaction considering it to be exempt for the tax period of August 2017. The due date of filing annual return for which will be 31st December 2018. The proper officer may serve the notice at least three months prior to the last date of order of demand.

The order of demand shall be served within 3 years from 31st December 2018 i.e. 31st December 2021. Therefore, show cause notice shall be required to be served by 30th September, 2021.

Under Section 74: Let say, in case Mr. A has not paid the tax on a transaction for the tax period of August 2017. The due date of filing annual return for which will be 31st December 2018. The proper officer may serve the notice at least six months prior to the last date of order of demand.

The order of demand shall be served within 5 years from 31st December 2018 i.e. 31st December 2023. Therefore, show cause notice shall be required to be served by 30th June, 2023.

Q14. Whether proper officer can issue similar show cause notice for any periods other than those covered under section 73(1)?

A. Yes, it can be issued for subsequent periods on same grounds raised in the show cause notice. The proper officer may serve a statement under section 73(3) along with a summary electronically in Form GST DRC-02 containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized where the grounds relied upon by the proper officer for such periods are the same as are mentioned in the earlier notice issued under section 73(1). The service of such statement shall be deemed to be service of show cause notice on the person chargeable with tax.

Q15. Whether notice for a period of 5 years is valid even if charge of suppression, fraud and misstatement are not sustained?

A. No, when the allegations of fraud, suppression or misstatement are not established, the notice issued under section 74 would get covered under section 73 and 3 years' time would be applicable for date of issue of order.

Q16. What happens when the Notice issued under Section 74(1) is held not sustainable by any Appellate Authority or Tribunal or Court for the reason that the charges of fraud or any willful misstatement or suppression of facts to evade tax has not been established?

A. The proper officer shall determine the tax payable by such person deeming as if the Notice were issued under section 73(1).

Q17. What is the time limit for issue of order in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court?

A. The order shall be issued within 2 years from the date of communication of the said direction.

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Q18. What happens in cases where Notice is issued but order has not been passed within 3 years (Section 73) or 5 years (Section 74)?

A. The adjudication proceedings shall be deemed to be concluded if the order is not issued within the limitation period of 3 years under section 73(10) or 5 years under section 74(10), as the case may be.

Q19. Is interest applicable in all cases, even if not specifically mentioned?

A. Yes, interest is applicable whenever the tax is payable whether or not it is specifically mentioned.

Q20. In case the person does not deposit tax collected in contravention of Section 76, is the same recoverable with interest?

A. Yes. In addition to the amount payable by him, the person is required to pay interest under Section 50 on the same from the date of collection of the amount till the date such amount is paid to the Government.

Q21. Is there any time limit for issue of notice under section 76 in cases where tax collected but not paid to Government?

A. No. Notice can be issued on detection of such cases without any time limit. Once show cause notice is issued, the proper officer shall pass the order within 1 year from the date of issue of such notice.

Q22. How is the amount of surplus left after adjustment with tax payable dealt with?

A. Where any surplus is left after the adjustment against the tax payable, the amount of such surplus shall either be credited to the Consumer Welfare Fund or, as the case may be, refunded to the person who has borne the incidence of such amount.

Q23. What happens if the tax demand is not paid within the time limit prescribed under section 78?

A. The proper officer shall initiate recovery proceedings if the tax demand is not paid within 3 months from the date of service of the order.

Q24. Whether the proper officer can require a taxable person to make payment of tax demand within shorter period lesser than 3 months?

A. Yes. If it is expedient in the interest of the revenue, the proper officer, after recording reasons in writing, may require taxable person to make such payment within shorter period as may be prescribed by him.

Q25. What are the methods of recovery as prescribed in Section 79?

A.

- Deduction out of any money owing to defaulter.
- By detaining and selling the goods belonging to defaulter.
- Recovery from any other person who owes money to defaulter.
- Collection by detention of any movable or immovable property.
- Recovery through District Collector.
- Recovery through Magistrate.

Q26. Whether proper officer can allow payment of self-assessed tax in installments U/s 80?

A. No. The proper officer shall have the power to allow payment of any amount due under this Act in installments on tax other than the self-assessed tax.

Q27. Under which proceedings the property of a taxable person can be provisional attached?

A. Provisional attachment shall be applicable for the following pending proceedings of a taxable person:

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- Assessment of non-filers of returns. (Section 62)
- Assessment of unregistered persons. (Section 63)
- Summary assessment in certain special cases. (Section 64)
- Inspection, search and seizure. (Section 67)
- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts. (Section 73)
- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts. (Section 74)

During the pendency of any proceedings under section 62, 63, 64, 67, 73 or 74, the Commissioner may pass an order in Form GST DRC-22 to attach any property including bank account belonging to a taxable person provisionally for the purpose of protecting the interest of the Government revenue.

Q28. Whether any amount payable by the taxable person under this Act is a first charge on his property?

A. Yes. As per section 82 of CGST Act 2017, notwithstanding anything to the contrary contained in any law for the time being force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, first charge shall be on –

- the property of taxable person in respect of any amount payable by such taxable person, or
- the property of any other person on account of tax, interest or penalty which he is liable to pay to the Government.

Q29. In case of recovery of SGST/UTGST by CGST officer in the course of recovery of CGST, where the total amount recovered is Rs. 5 Crore whereas the amounts due were Rs. 5 Crores of CGST and Rs. 10 Crore of SGST/UTGST, to which account, the amount recovered would be allocated?

A. Rs. 5 Crores recovered will be allocated between Centre and State/Union Territory in the proportion of 1:2.

Q30. 'A' requested the Commissioner to provide the benefit to pay Rs. 5,00,000/- under installments. Commissioner directs 'A' to make the payment in five monthly installments. How to pay the interest?

A. It is assumed that the actual date on which the tax was required to be paid as 06.06.2015. Benefit of installment was granted by Commissioner on 25.05.2016 to be paid w.e.f. 02.06.2016 onwards over 5 installments.

Payment date	Interest to be paid as per section 45 – No of days	Amount on which interest to be paid
1st Installment – 02.06.2016	06.06.2015 to 01.06.2016 = 361 days	Rs. 100,000
2nd Installment – 02.07.2016	06.06.2015 to 01.07.2016 = 391 days	Rs. 100,000
3rd Installment – 02.08.2016	06.06.2015 to 01.08.2016 = 422 days	Rs. 100,000
4th Installment - 02.09.2016	06.06.2015 to 01.09.2016 = 453 days	Rs. 100,000
5th Installment – 02.10.2016	06.06.2015 to 01.10.2016 = 483 days	Rs. 100,000

Q31. Please provide comment for below with respect to provision U/s 81.

- Mr. Defrauder was served with a notice of demand for Rs. 20 Lakhs on 10th June 2018. He filed a reply for the said notice on 20th June 2018, stating that he was unable to deposit tax dues as he was financially stressed. On 15th June 2018, Mr. Defrauder transferred all the property worth Rs. 35 Lakhs under his name to the name of his wife for a consideration of Rs. 10,000/-. Is this act of Mr. Defrauder valid?

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- In the above illustration, if transfer of property was for a consideration of Rs. 42 Lakhs to Mr. X who is unaware of the pending proceedings of Mr. Defrauder. The transfer took place on 15th June 2018. Is the act of Mr. Defrauder valid?
- On Mr. Perfect, notice was issued on 10th June 2018. However, the same was received by Mr. Perfect on 20th June, 2018. Meanwhile the property of Mr. Perfect was sold to Mr. Perfectionist for Rs. 35 lakhs. Is the sale void or valid?

A.

- As per section 81, the said transfer would be void and the property worth Rs. 35 Lakhs would be considered still to be in the hands of Mr. Defrauder.
- In this case the transaction would be a valid act, since the transfer was made for adequate consideration and also without notice of the pendency of proceeding.
- The sale is valid since on the date of sale there was no pending proceeding on Mr. Perfect.

Q32. How should the recovery proceedings of enhanced demand under an appeal, revision of application or other proceedings to be continued U/s 84?

A. In case of enhanced demand consequent to appeal, revision of application or other proceedings, then

- the Commissioner is required to issue fresh notice of demand only for enhance demand.
- If already recovery proceedings of Govt. dues is served on taxable person before disposal of appeal, revision of application or other proceedings, then the enhanced demand would be merged with the first recovery proceedings.

Q33. Checkernot has self-assessed tax liability under IGST Act, 2017, as Rs. 80,000. He fails to pay the tax within 30 days from the due date of payment of such tax.

Determine the interest and penalty payable by him explaining the provisions of law, with the following particulars available from his records:

Date of collection of tax 18th December, 2017

Date of payment of tax 26th February, 2018

No Show Cause Notice (SCN) has been issued to him so far, while he intends to discharge his liability, even before it is issued to him, on the assumption that no penalty is leviable on him as payment is made before issue of SCN.

(CA Final May 2018 Old)

A. Due date for payment of tax collected on 18.12.2017 is 20.01.2018. However, since tax is actually paid on 26.02.2018, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [37 days] in terms of section 50 of CGST Act, 2017 read with Notification No. 13/2017 CT Dated 28.06.2017.

Amount of interest is: = Rs. 80,000 × 18% × 37/365 = Rs. 1,460 (rounded off)

As per section 73(11) of CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, inter alia, option to pay such tax before issuance of SCN to avoid penalty, is not available.

Consequently, penalty equivalent to

(i) 10% of tax, viz., Rs. 8,000 or

(ii) Rs. 10,000,

whichever is higher,

is payable in terms of section 73(9) of CGST Act, 2017. Therefore, penalty of Rs. 10,000 will have to be paid by Checkernot.

However, CBIC vide Circular No. 76/50/2018-GST dated 31-12-2018 has clarified that penalty U/s 73 (11) can be levied only when show cause notice is issued as per the provisions of Section 73 of the Act. No penalty in accordance with Section 73 (11) of the CGST Act should be levied in cases where the return in Form GSTR –

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3B has been filed after the due date of filing such return. However, general penalty U/s 125 can be imposed in such cases.

Q34. Mr. X, registered under GST Act, had made short payment of GST for the month of July 2017. He does not want a show cause notice to be served on him by proper officer. Advice Mr. X, if :

- (i) Short payment of tax is on account of reasons other than fraud
- (ii) Short payment of tax is on account of fraud.

(CA Final Nov 2018 Old)

A.

- (i) Short payment of tax is on account of reasons other than fraud As per section 73 of the CGST Act, 2017, the show cause notice will not be issued by the proper officer, if Mr. X pays the amount of tax short paid along with interest payable thereon on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer, before the service of notice and inform the proper officer in writing of such payment.
- (ii) Short payment of tax is on account of fraud As per section 74 of the CGST Act, 2017, the show cause notice will not be issued by the proper officer, if Mr. X pays the amount of tax short paid along with interest payable thereon and a penalty equal to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer, before the service of notice and inform the proper officer in writing of such payment.

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Chapter 20: - Liability to pay in certain cases

Section 85	Liability to pay in case of transfer of business
Section 86	Liability of agent and principal
Section 87	Liability to pay in case of an amalgamation/merger
Section 88	Liability in case of company in liquidation
Section 89	Liability of directors of private company
Section 90	Liability of partners of firm to pay tax
Section 91	Liability of guardians, trustees etc.
Section 92	Liability of Court of Wards etc.
Section 93	Special provisions regarding liability to pay tax, interest or penalty in certain cases
Section 94	Liability in other cases

Section 85 Liability to pay in case of transfer of business

<u>Prior to transfer of business</u> In respect of liability of tax, interest or penalty arising prior to transfer of business, the transferor and transferee shall be jointly and severally liable.	<u>Post transfer of business</u> In respect of liability arising post transfer, the transferee liable for tax dues. Further, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.
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Interestingly, even penal liability, which is quasi-criminal in nature, is sought to be fastened on transferee, although he would not have been responsible for the non-payment of tax, interest or penalty liability by the transferor prior to transfer of such business. Thus, a person to whom the business is transferred needs to be very cautious at the time of transfer.

Section 86 Liability of agent & principal

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, **jointly and severally**, be liable to pay the tax payable on such goods under this Act.

Section 87 Liability in case of amalgamation or merger of companies

If merger is effective from retrospective date, then, transactions between amalgamating/merging companies and amalgamated/merged company during the period from 'effective date of merger' to 'date of order upholding merger' shall be taxable and for this, companies are deemed to be separate.

Example 1: if merger order is passed on 1-9-2017 and merger takes effect from 1-5-2017, then, transactions during May 2017 to August 2017 between the said companies would be taxable.

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Section 88 Liability in case of company in liquidation

The liquidator of company is required to give intimation of his appointment to Commissioner within 30 days after his appointment. The Commissioner shall notify the liquidator within 3 months from the date on which he receives intimation the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or it likely thereafter to become, payable by the company.

When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty.

The director of a private company shall not be held liable if he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Section 89 Liability of directors of private company

Directors shall be jointly and severally liable in case tax dues cannot be recovered from company unless the director proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. In case of conversion of private company into public company, then, this section will not apply for dues arising prior to such conversion. However, any personal penalty imposed on such director will not be affected and can continue.

Section 90 Liability of partners of firm to pay tax

Where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment. Where any partner retires from the firm, he or the firm, has to intimate the date of retirement of partner to the Commissioner and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

If no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by Commissioner.

Section 91 Liability of guardians, trustees, etc.

If business is carried on for the benefit of a minor or incapacitated person, Guardian/Trustee/Agent will be liable to pay tax. Guardian, trustee or agent liable in like manner as minor or other incapacitated person is liable. The dues are recoverable from the guardian, trustee or agent in respect of business of the minor or other incapacitated person by treating them as major or capacitated person, who is conducting the business for himself.

Section 92 Liability of Court of wards, etc.

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation,

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who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

Example 2: Mr. A is appointed as manager of Mr. X, to manage the estate of Mr. X, who owns an automotive business. Mr. X is liable to pay Rs. 10,00,000 of CGST & Rs. 5,00,000 of SGST along with interest and penalty to the Government. The department can recover such dues from Mr. A who is managing the estates of Mr. X, by invoking this provision.

Section 93 Special provisions regarding liability to pay tax, interest or penalty in certain cases

- (1) Liability in case of death of individual: Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then –
 - a. In case of continuation of business: person who continues the business shall be liable to pay tax, interest or penalty due from such person under this Act; and
 - b. In case of discontinuation of business before or after his death: Legal representative is liable to pay tax, interest or penalty and the liability shall be limited to the extent of estate of deceased.
- (2) In case of partition of HUF or AOP: Members or group of members shall be jointly or severally liable to pay the tax, interest or penalty due from the taxable person.
- (3) In case of dissolution of firm: Partners of the firm at the time of dissolution shall be jointly and severally liable to pay the tax, interest or penalty due from the firm.
- (4) In case of termination of Guardianship or Trusteeship: The ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

Section 94 Liability in other cases

- a. Where business is discontinued the tax, interest or penalty payable under this Act by firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person. [In short, erstwhile members/partners are liable to pay dues upto date of discontinuance/dissolution]
- b. There will be Joint & several liability of partners of firm or member of AOP in case of change in constitution of firm/AOP.

Explanation: For the purpose of this chapter:

- I. Wherever the word "Firm" is used in this chapter, it shall include the LLP registered under Limited Liability Partnership Act, 2008.
- II. "court" means the district court, high court or supreme court.

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Question & Answer

Q1. A person, liable to pay GST, interest and penalty under GST Act, dies. Who will be liable to pay his dues after his death if business carried on by such person legal representative or business carried on by such person who has dies, is discontinued after his death?

A. As per Section 93, if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

If a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Q2. ABC Ltd. engages XYZ Ltd. as an agent to sell goods on its behalf. XYZ Ltd. sells goods to DEF Ltd. on behalf of ABC Ltd. Who will be liable U/s 86?

A. Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act. Thus, in the given case, ABC Ltd. and XYZ Ltd. shall, jointly and severally, be liable to pay GST payable on such goods.

Q3. Whether the minor for whom the business is carried out by Guardian can escape liability on the ground of minority of the beneficiary?

A. The minor is deemed to be a major for the purposes of collection of any tax/interest/penalties arising out of the business carried out for him. Hence the general principle of law has no application and the Guardian, Trustee or Agent cannot escape such liability.

Q4. Who is liable to pay tax dues if the estate of a taxable person is controlled by Court of Wards?

A. The dues are recoverable from the Court of Wards as if he is conducting the business for himself. Mr. Amit Roy is appointed as manager of Mr. Sumit, to manage the estate of Mr. Sumit, who owns the business of glasses. Mr. Sumit is liable to pay Rs. 10 Lakhs of GST, interest & penalty to the Government. The department can recover such dues from Mr. Amit Roy who is managing the estates of Mr. Sumit by invoking Section 92.

Q5. Whether the director of a Private Limited Company is liable for the payment of tax in respect of the supply made by or to such Private Company?

A. Yes. Every director of the private company during the period for which, tax, interest or penalty due in respect of any supply of goods or services or both, is not recovered shall jointly and severally be liable for the payment of such tax, interest or penalty, unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the Company.

Q6. Whether the liability of the director still exists if such Private Limited Company is converted into Public Limited Company?

A. No. If a Private Limited Company is converted into a Public Limited Company, then the provisions of this section do not apply. However, any other personal penalty could be imposed on the Director.

Q7. Whether the retiring partner is liable in respect of the transactions taken place after his retirement?

A. No. The Retiring partner is not liable for the transactions taken place after his retirement provided he or the firm intimates to the Commissioner by a notice in writing of his retirement within one month from the date of retirement.

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Chapter 21: - Offences & Penalties

Section 122	Penalty for certain offences
Section 123	Penalty for failure to furnish information return
Section 124	Fine for failure to furnish information return
Section 125	General penalty
Section 126	General disciplines related to penalty
Section 127	Power to impose penalty in certain cases
Section 128	Power to waive penalty or fee or both
Section 129	Detention, seizure and release of goods and conveyances in transit
Section 130	Confiscation of goods or conveyances and levy of penalty
Section 131	Confiscation or penalty not to interfere with other punishments
Section 132	Punishments for certain offences
Section 133	Liability of officers and certain other person
Section 134	Cognizance of offences
Section 135	Presumption of culpable mental state
Section 136	Relevancy of statements under certain circumstances
Section 137	Offences by companies
Section 138	Compounding of offences

Section 122 Penalty for certain offences

Sec. 122 (1)

Where a taxable person who-

- supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
- collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under subsection (2) thereof, the amount deducted as tax;
- fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

he shall be liable to pay a penalty of

- Rs. 10,000 (Rs. 20,000 CGST+SGST/IGST) or
 - Any of the following: -
 - Tax evaded
 - ITC availed or passed on or distributed irregularly
 - TDS not deducted/short deducted/not deposited to Government
 - TCS not collected/short collected/not deposited to Government
 - refund claimed fraudulently
- whichever is higher

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- (vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- (viii) fraudulently obtains refund of tax under this Act;
- (ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;
- (x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- (xi) is liable to be registered under this Act but fails to obtain registration;
- (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
- (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- (xix) issues any invoice or document by using the registration number of another registered person;
- (xx) tampers with, or destroys any material evidence or document;
- (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

Example:

1. ABC issues an invoice of 100 kg of chocolates for a consignment of 250 kg of chocolates. If such consignment is caught by the tax authorities and misdeclaration is verified, then ABC, shall be liable to pay penalty.
2. Mr. A supplied goods on 05.08.2018 and issued a tax invoice accordingly, for which payment was also received in the same month. In this case, the due date for payment of tax on such supply of goods will be 20.09.2018 (i.e. the due date for filing return for the month of August 2018). Mr. A is obligated to make the payment of tax by 20.12.2018 for refraining from payment of penalty. However, he shall continue to be liable to pay interest @ 18% p.a. for delayed payment of tax starting from the date following the due date of payment, till the date of payment.
3. Mr. B is engaged in trading of goods, collects tax at the rate of 28% from the buyer, whereas the actual tax rate is 18%. He deposited tax at 18% to the exchequer. Here, the differential tax of 10% collected by Mr. B, but not deposited to government, cannot be retained by it. Penalty U/s 122 (1) can be levied in such case. Further, interest @ 18% p.a. for delayed payment of tax starting from the date following the due date of payment, till the date of payment, shall also be leviable.
4. Mr. A engaged in inter-State supply of various taxable goods. In terms of Section 24 (i), Mr. A is mandatorily required to take registration in GST but fails to take registration under GST even after 30 days of conducting business. In such case, he shall be liable to penalty U/s 122 (1).

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5. XYZ Ltd. has various warehouses through which they supply goods to their customers, but such warehouses have not been declared as additional place of business in their registration. XYZ Ltd. shall be liable to penalty under this clause.

Sec. 122 (2)

Any registered person who supplies any goods or services or both on which tax has not been paid or short-paid or erroneously refunded, or where the ITC has been wrongly availed or utilized

- Penalty Rs. 10,000 or 10% of tax involved, whichever is higher
- In case of fraud/wilful misstatement/suppressions of facts to evade tax
Penalty Rs. 10,000 or 100% of the tax amount, whichever is higher

Sec. 122 (3)

Any person who-

- Aids or abets offences specified U/s 122 (1)
- Acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- Receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- Fails to appear before the officer of central tax, when issued with a summons for appearance to give evidence or produce a document in an inquiry;
- Fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account.

Amount which may extend to Rs. 25,000

Section 123 Penalty for failure to furnish information return

Section 124 Fine for failure to furnish information return

Section 125 General Penalty

Sec. 123 Failure to furnish information return with the period as specified in notice	Rs. 100 for each day of the period during which the failure to furnish information return continues subject to maximum of Rs. 5,000
Sec. 124 Fails to furnish statistics without reasonable cause/wilfully furnishes or causes to furnish false information	• Rs. 10,000 • In continuing offence Rs. 100 per day subject to maximum of Rs. 25,000
Sec. 125 Contravention for which no penalty is provided separately	Amount which may extend to Rs. 25,000

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Section 126 General disciplines related to penalty

- I. Penalty shall not to be imposed for minor breaches or omission or mistake in documentation made without fraudulent intent or gross negligence. A breach shall be considered a 'minor breach' if the amount of tax involved is less than Rs. 5,000. An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
- II. Penalty imposed shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach. No penalty shall be imposed on any person without giving him an opportunity of being heard. Penalty order must clearly specify the nature of breach. Voluntary disclosure to be a mitigating factor when quantifying a penalty. The provision of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

Section 127 Power to impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Section 128 Power to waive penalty or fee or both

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Section 129 Detention, seizure and release of goods and conveyances in transit

If a person contravenes any provision of the Act while transporting or storing goods, then such goods and the conveyance in which such goods are carried and all the documents relating to such goods and conveyance can be detained or seized. The proper officer detaining and seizing the goods and/or conveyance has to give proper opportunity to the transporter to explain his case by issuing a proper notice to him. After hearing the transporter, the officer shall pass an appropriate order.

- (a) In case of default, where the owner of the goods comes forward for the payment of tax, penalty will be levied equal to
 - 100% of the amount of tax and
 - in case of exempted goods 2% of the value of goods or Rs. 25,000/- whichever is less.
- (b) In case where owner of the goods does not come forward for payment of tax, then an order shall be passed for
 - payment of amount of tax and penalty equal to 50% of the value of goods reduced by tax amount paid (to be paid by any other person other than owner) and
 - in case of exempted goods 5% of the value of goods or Rs. 25,000/- whichever is less.
- (c) Upon furnishing a security equivalent to the amount payable under above clause (a) or (b) in such form and manner as may be prescribed.

The proper officer shall release the goods upon the payment of tax and amount of penalty in the above manner and all the proceedings under this particular section shall deemed to be concluded. However, if the person (either owner of the goods or any other person) fails to discharge the amount of tax and penalty under this section within 7 14 days, than the goods and/or conveyance shall be liable for confiscation (proceedings u/s

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130). The period of 14 days can be reduced by proper officer if goods are of perishable or hazardous nature. Further, such goods can be released on provisional basis under bond as per the provisions of section 67.

Circular No. 76/50/2018 – Central Tax Dated 31.12.2018 clarifies that 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. But 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 the goods.

Example 6: Mr. A (owner), a registered taxable person is getting its goods (taxable @ 18%) amounting to Rs. 10,00,000 (exclusive of GST) transported, without cover of an invoice and an e-way bill.

In this case, the said goods and the vehicle carrying such goods shall be liable to detention or seizure. If detained or seized, the goods of Mr. A would be released on payment of the following amounts:-

(a) Where Mr. A, comes forward for the payment of tax and penalty:

Applicable tax (Rs. 10,00,000 * 18%)	Rs. 1,80,000
Penalty equal to 100% of the tax payable on the subjected goods	Rs. 1,80,000
Total	Rs. 3,60,000

(b) Where Mr. A, doesn't come forward for the payment of tax and penalty:

Applicable tax (Rs. 10,00,000 * 18%)	Rs. 1,80,000
Penalty equal to 50% of the value of the subjected goods reduced by the tax amount paid thereon (i.e. 50% of Rs. 10,00,000 less Rs. 1,80,000)	Rs. 3,20,000
Total	Rs. 5,00,000

Section 130 Confiscation of goods or conveyances and levy of penalty

This section provides for specific causes leading to confiscation of goods/conveyances. The nature of authorization to confiscate and opportunity to release goods/conveyances liable for such confiscation are detailed in this section.

There are five precise causes for confiscation of goods and/or conveyances specified in this section and they are:

Action	Consequence
Supply or receive goods in contravention of the Act or rules made thereunder	Resulting in actual evasion of tax
Not accounting for goods	Carrying a liability to payment of tax
Supply of goods liable to tax	Without applying registration
Contravention of the provisions of Act or rules made thereunder	With intent to evade payment of tax
Use of conveyance as a means of transport/for carriage of taxable goods	In contravention of the Act or rules made thereunder

In all the above cases, goods or conveyance shall be liable for confiscation. However, the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the connivance of owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under section 122 of the Act.

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If the goods or conveyance are liable to be confiscated under the provisions of this Act, the proper officer shall give the owner of the goods an option to pay fine in lieu of confiscation.

The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon. However, at the same time aggregate of fine and penalty leviable shall not be less than the amount of penalty as leviable under section 129(1). While section 129 is applicable on transporters, section 130 primarily covers the owner.

Where the conveyance is used for transportation of goods or passenger on hire, the owner of the conveyance shall be given an option to pay in lieu of confiscation of the conveyance a fine equal to amount of tax payable on the goods transported on his conveyance. It is worthwhile to note that the amount of fine payable is in addition to any tax, penalty and other charges payable on confiscated goods or conveyance.

The order for confiscation cannot be issued without giving the person an opportunity of being heard.

The title of the confiscated goods or conveyance shall be vested upon the Government.

The proper officer adjudging confiscation shall take and hold possession of the things confiscated on behalf of the Government and every officer of police shall assist in taking such hold and possession.

If the proper officer is satisfied that the confiscated goods/conveyance are not required for any proceedings under the Act, then he shall after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose the goods and deposit the sale proceeds with the Government.

Section 131 Confiscation or penalty not to interfere with other punishments

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

Such other proceedings can be that of prosecution (commencement of criminal proceeding), arrest, cancellation of registration etc., as applicable and provided for the relevant non-compliances. Thus, confiscation made, or penalty imposed cannot relieve the person from other punishments, as may be applicable.

Section 132 Punishment for certain offences

(1) Whoever commits any of the following offences, namely:

- (a) Supply of goods or services or both without the cover of invoice with an intent to evade tax;
- (b) If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;
- (c) Any person who avails input tax credit using invoice referred in point (b) above;
- (d) Collection of taxes without payment to the government for a period beyond 3 months of due date;
- (e) Evasion of tax, availment of credit or obtaining refund with intent of fraud where such offence is not covered in clause (a) to (d) above;
- (f) Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;
- (g) Obstructs or prevents any officer from doing his duties under the act;
- (h) Acquires or transports or in any manner or deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules made thereunder;
- (i) Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;

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- (j) Tamper with or destroys any material evidence or documents;
- (k) Fails to supply any information which he is required to supply under this law or supply false information;
- (l) Attempts or abets the commission of any of the offences mentioned above {clauses (a) to (k) of this section.

This section enables institution of prosecution proceedings against the offenders and the period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence listed below.

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment
(i) Exceeding 5 Crores	Yes	Upto 5 years
(ii) Exceeding 2 Crores to 5 Crores	Yes	Upto 3 years
(iii) Exceeding 1 Crores to 2 Crores	Yes	Upto 1 year

If any person commits any offence specified in clause (f), (g) or (j) above, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

In case of repetitive offences without any specific/special reason which is recorded in the judgment of the Court will entail an imprisonment term of not less than 6 months and which could extend to 5 years plus with a fine.

The Imprisonment referred to in clauses (i), (ii) & (iii) and repetitive offences, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of Court, be for a term not less than six months.

All offences mentioned in this section are non-cognizable and bailable except the following cases:

- Where the amount exceeds 5 Crores and
- Instances covered by (a) to (d) in sub section (1) above.

Every prosecution proceeding initiated requires prior sanction of the Commissioner.

Section 133 Liability of officers and certain other persons

Where –

- any person engaged in collection of statistics or compilation or computerisation thereof
- if officer having access to Annual Information Return, or
- if any person engaged in provision of service on common portal or agent of common portal,

wilfully disclosed any information or the contents of any return furnished under this Act or rules made there under (otherwise than in execution of his duties or for prosecution for an offence), he shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 25,000, or with both.

Section 134 Cognizance of offences

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

Section 135 Presumption of culpable mental state

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused

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to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—For the purposes of this section,—

- (i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Now, once the law has stated that in case of any prosecution which requires the existence of a culpable mental state, the Court would presume the existence of it.

Under the old revenue laws, the burden to prove was on the one who alleges it. The Hon’ble Supreme Court in the case of *Uniworth Textiles Limited vs. Commissioner of Central Excise, Raipur* [(2013) 31 taxmann.com 67 (SC)] stated that “Burden to prove invocation of extended period on Department. The assessee cannot be asked to bring evidence to prove his bona fide. Similarly it is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it.”

The accused can prove that he had no such mental state in respect of a particular act for which he is charged. The expression “Culpable Mental State” is defined inclusively to cover “intent, motive, knowledge of fact, belief in or reason to believe”. It also covers facts which exist beyond a reasonable doubt and not based on probabilities.

Hence, a very landmark judgement of the Hon’ble Supreme Court would lose its relevance in the cases covered by this section.

Section 136 Relevancy of statements under certain circumstances

Statement made and signed by a person on appearance in response to any summons issued U/s 70 shall be valid in prosecution proceedings when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Section 137 Offences by companies

Where an offence committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Where it is proved that the offence has been committed with the consent or connivance of, or it attributable to any negligence on the part of, any director, manager, secretary, or other officer of the company, they shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by LLP/Firm/HUF/Trust: Partner or Karta or managing trustee shall be liable to be proceeded against and punished accordingly.

Section 138 Compounding of offences

- (1) Compounding of offences by the Commissioner [Sec. 138(1)]: Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed.

Cases, where compounding is not possible: Nothing contained in this section shall apply to

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- a. a person who has been allowed to compound once in respect of any of the offences specified in Sec. 132(1)(a) to (f) and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- b. a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any SGST Act of the UTGST Act of the IGST Act in respect of supplies of value exceeding Rs. 1 crores;
- c. a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- d. a person who has been convicted for an offence under this Act by a court;
- e. a person who has been accused of committing an offence specified in Section 132(1)(g)/(j)/(k); and
- f. any other class of persons or offences as may be prescribed.

Compounding not to affect proceedings instituted under other law: Any compounding allowed under the provisioning of this section shall not affect the proceedings, if any, instituted under any other law.

Tax/Interest/Penalty to be paid before compounding: Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- (2) Compounding amount [Section 138(2)]: The amount for compounding of offences under this section shall be such as may be prescribed, subject to –
 - a. The minimum limit for compounding amount is to be the higher of the following amounts:
 - 50% of tax involved, or
 - Rs. 10,000 (Rs. 20,000 CGST+SGST/IGST).
 - b. The upper limit for compounding amount is to be higher of the following amount:
 - 150% of tax involved, or
 - Rs. 30,000 (Rs. 60,000 CGST+SGST/IGST).
- (3) Abatement of proceedings and non-initiation of criminal proceedings [Section 138(3)]: On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Example 7: Suppose, the amount of tax involved is Rs. 90,000. In this case, the minimum and maximum amount to be paid for compounding for offence will be calculated as under:-

- Minimum amount: Higher of Rs. 20,000 or Rs. 45,000 (50% of Rs. 90,000)
- Maximum amount: Higher of Rs. 60,000 or Rs. 1,35,000 (150% of Rs. 90,000)

Please remember penalty specified in CGST Act, is only for CGST Act. So, SGST/UTGST will be equivalent to CGST & IGST will be double.

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Question & Answer

Q1. Mr. A, an unregistered person under GST purchases the goods supplied by Mr. B who is a registered person without receiving a tax invoice from Mr. B and thus helps in tax evasion by Mr. B. What action may be taken by tax authorities to curb such type of cases and on whom?

A. Both Mr. A & Mr. B will be liable to penalty as:

Mr. A, penalty U/s 122 (3) which may extend to Rs. 25,000 (under CGST Act);

Mr. B, penalty U/s 122 (1), which will be higher of Rs. 10,000 (under CGST Act) or 100% of tax evaded.

Q2. What is the difference between the penalty under sub-section (1) and (3) of sec. 122?

A. Apart from the amount of penalty & nature of offences, U/s 122 (1) penalty is imposed on a taxable person whereas in U/s 122 (3), penalty is imposed on any person who may or may not be a taxable person.

Q3. What is the general penalty which can be levied for any violation for which no specific penalty has been prescribed?

A. Section 125 of the GST Act prescribes penalty of rupees twenty-five thousand for all those violations of provisions of the Act or any rules for which no penalty is separately provided for under the Act.

Q4. When breach of law will be considered as a minor breach and easily rectifiable mistakes?

A. As per explanation to sub-section (1) of section 126 of the GST Act, provides that a 'minor breach' shall be considered as minor breach if the amount of tax involved is less than Rs. 5,000. An omission or mistake in documentation will be considered to be 'easily rectifiable' if the same is an error apparent on record.

Q5. I am collecting tax on supply of goods & services and did not remit the same within 3 months to the Government. Does the same attract penalty? If yes, what is the amount of penalty?

A. Collection of tax and non-remittance of the same within 3 months to the Government from the due date for remittance is considered to be an offence under Section 122 (1) (iii) of the CGST Act, 2017 attracting penalty of (a) an amount equal to the tax so collected or (b) an Rs. 10,000 (whichever is higher).

Q6. Whether prosecution or other punishments could also be initiated along with confiscation or penalty?

A. In terms of section 131 confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall not prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

Q7. Mr. A has collected tax on supply of exempted goods and did not remit the tax so collected to the Government account. Would Mr. A, be liable to penal and other consequences?

A. Yes, in terms of Section 122(1) (iv) of the CGST Act, 2017, collection of tax in contravention to the provisions of the CGST Act, 2017 and subsequent failure to remit the same to the credit of the Government beyond a period of 3 months from the date on which such payment becomes due is an offence attracting penalty of Rs. 10,000/- or amount equal to the amount of tax so collected, whichever is higher.

Further, in terms of Section 132(1) (d) read with Section 132(1) (l) of the CGST Act, 2017, the said offence attracts imprisonment which may extend from 1 year to 5 years based on the quantum of tax evasion.

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Q8. What is the penalty prescribed for a person who opts for composition scheme despite being ineligible for the said scheme?

A. Section 10(5) of the CGST Act provides that if a person who has paid under composition levy is found as not being eligible for compounding then such person shall be liable to penalty to an amount equivalent to the tax payable by him under the provisions of the Act i.e. as a normal taxable person and that this penalty shall be in addition to the tax payable by him.

Q9. Mangeshwar, registered under the CGST Act, 2017 has made a breach in payment of tax amounting to Rs. 6,100. Assessing Authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of section 126, Mangeshwar argues that it is a minor breach and therefore, no penalty is imposable.

In another instance, Mangeshwar has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore no penalty should be levied.

Mangeshwar voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant.

Also a lapse on the part of Mangeshwar has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under the Act.

Discuss, what action may be taken by the Assessing Authority under law for each of the above breaches.

(CA Final Nov 2018 Old)

A. As per section 126(1) of the CGST Act, 2017, no penalty shall be leviable under the Act for minor breaches of tax regulations. In terms of Explanation (a) to section 126(1), a breach shall be considered as "minor breach", if tax involved is less than Rs. 5,000. Breach made by Mangeshwar is not a 'minor breach' since the amount involved is not less than Rs. 5,000. So, penalty is imposable. Any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent/gross negligence is not liable for penalty in terms of section 126(1) of the CGST Act, 2017. Thus, penalty is imposable in the present case, since the omission in the documentation is not easily rectifiable and has occurred due to gross negligence. As per section 126(5) of the CGST Act, 2017, where there is a voluntary disclosure of breach, prior to its discovery by the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Since Mangeshwar has voluntarily disclosed the breach of procedural requirement to the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Therefore, the quantum of penalty will depend on the facts and circumstances of the case.

As per section 125 of the CGST Act, 2017, when no specific penalty has been specified for contravention of any of the provisions of the Act or any rules made there under, it shall be liable to a penalty which may extend to Rs. 25,000. Therefore, general penalty upto Rs. 25,000 may be imposed on Mangeshwar as when no specific penalty is provided for any contravention, a general penalty may be imposed.

Q10. Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period December, 2017 under CGST Act, 2017:

- i. 'X' collects Rs. 245 lakh as tax from its clients and deposits Rs. 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.
- ii. 'Y' collects Rs. 550 lakh as tax from its clients but deposits only Rs. 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences?

What would be the position, if 'X' and 'Y' repeat the offences?

It may be assumed that offences are proved in the court.

(CA Final May 2018 New)

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A.

- i. As per section 132(1)(d)(iii) of the CGST Act, 2017, failure to pay any amount collected as tax beyond 3 months from due date of payment is punishable with specified imprisonment and fine provided the amount of tax evaded exceeds at least Rs. 100 lakh. Therefore, failure to deposit Rs. 4 lakh collected as tax by 'X' will not be punishable with imprisonment. Further, falsification of financial records by 'X' is punishable with imprisonment up to 6 months or with fine or both vide section 132(1)(f)(iv) of the CGST Act, 2017 and the said offence is bailable in terms of section 132(4) of the CGST Act, 2017 assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017.
- ii. Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds Rs. 500 lakh in terms of section 132(1)(d)(i) of the CGST Act, 2017. Since the amount of tax evaded by 'Y' exceeds Rs. 500 lakh (Rs. 550 lakh – Rs. 30 lakh), 'Y' is liable to imprisonment upto 5 years and with fine. It has been assumed that amount of Rs. 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax. Further, the imprisonment shall be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment vide section 132(3) of the CGST Act, 2017. Such offence is nonbailable in terms of section 132(5) of the CGST Act, 2017.

If 'X' and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017. Such imprisonment shall also be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment.

Q11. From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on:

- i. The goods liable for confiscation.
- ii. On the conveyance used for carriage of such goods.

Details are as follows:

Cost of the goods for owner before GST Rs. 15,00,000

Market Value of Goods Rs. 20,00,000

GST on such Goods Rs. 3,60,000

You are also required to explain relevant legal provisions in brief.

(CA Final May 2018 New)

A.

- i. As per section 130(2) of the CGST Act, 2017, in case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is the market value of the goods confiscated, less the tax chargeable thereon.
Therefore, the fine leviable = Rs. 20,00,000 - Rs. 3,60,000 = Rs. 16,40,000. The aggregate of fine and penalty shall not be less than the amount of penalty leviable under section 129(1).
- ii. In case of conveyance used for carriage of such goods and liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is equal to tax payable on the goods being transported thereon [Third proviso to section 130(2) of the CGST Act, 2017].
Therefore, the fine leviable = Rs. 3,60,000.

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Q12. Where an offence under the GST law is committed by a taxable person being a trust, who are deemed to be guilty of the offence and under what circumstances? When do the relevant provisions become inapplicable in respect of individuals concerned with the trust? (CA Final Nov 2018 Old)

A. Section 137 of the CGST Act, 2017 stipulates that where an offence under the GST law is committed by a taxable person being a trust, the managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Further, where it is proved that the offence committed by the trust has been committed –

- with the consent or connivance of, or
- is attributable to any negligence on the part of any other individual concerned with the trust,

he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The relevant provisions will become inapplicable in respect of individuals concerned with the trust, if they prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such offence.

Q13. Department initiated prosecution proceedings against a taxable person who had evaded GST of Rs. 4.2 crores. He has approached the Commissioner with a request for compounding the offence. After considering the request, the Commissioner has directed him to pay an amount of Rs. 2.5 crores as compounding amount. Indicate the minimum and maximum limits for compounding amount. Is the amount fixed by the Commissioner in this case within the limits prescribed under the law? What is the consequence of the decision of the commissioner allowing the request for compounding the offence?

(CA Final Nov 2018 Old)

A. As per section 138 of the CGST Act, 2017, the minimum limit for compounding amount is higher of the following amounts: -

- i. 50% of tax involved, or
- ii. Rs. 10,000, and

the upper limit for compounding amount is higher of the following amounts: -

- i. 150% of tax involved or
- ii. Rs. 30,000

In the present case, the minimum limit for compounding is Rs. 2.10 crores. [Rs. 2.10 crores (50% x Rs. 4.2 crores) or Rs. 10,000, whichever is higher].

The maximum limit for compounding in this case is Rs. 6.3 crores [Rs. 6.3 crore (150% x Rs. 4.2 crores) or Rs. 30,000, whichever is higher].

Thus, the amount fixed by the Commissioner at Rs. 2.5 crores is within the limits prescribed under the law. If the taxable person pays the compounding amount decided by the Commissioner, no further proceedings shall be initiated under GST law against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

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Chapter 22: - Appeals and Revision

Section 107	Appeals to Appellate Authority
Section 108	Powers of Revisional Authority
Section 109	Constitution of Appellate Tribunal and Benches thereof
Section 111	Procedure before Appellate Tribunal
Section 112	Appeals to Appellate Tribunal
Section 113	Orders of Appellate Tribunal
Section 115	Interest on refund of amount paid for admission of appeal
Section 116	Appearance by authorized representative
Section 117	Appeal to the High Court
Section 118	Appeal to the Supreme Court
Section 119	Sums due to be paid notwithstanding appeal etc.
Section 120	Appeal not to be filed in certain case
Section 121	Non-appealable decisions and orders

Brief chart showing Appellate Mechanism under indirect taxes

Description	Appellate Authority	Revisional Authority	Appellate Tribunal	High Court	Supreme Court
Section	107	108	112	117	118
Appeal can be filed against	Order of Adjudicating Authority	Suo Motu Revision	Against order of (a) Appellate Authority or (b) Revisional Authority	Order of State/Area bench of Tribunal (If case involves substantial question of law)	Order of National/Regional bench of Tribunal and against orders of HC if HC certifies fit case for appeal to SC
Departmental Appeal	Department can file appeal after review by Commissioner	NA	Department can file appeal on review of Commissioner	Order of state/Area bench of Tribunal (If case involves substantial question of law)	Order of National/Regional bench of Tribunal and against orders of HC if HC certifies fit case for appeal to SC
Place of supply matters	Appealable	Revision power extends	National/Regional bench of Tribunal can hear	No	Yes
Other Matters	Appealable	Revision power extends	State/Area Bench of Tribunal can hear	Yes	Yes
Appeal Fee	Nil	NA	Rs. 1,000 per lakh of tax or ITC subject to	-	-

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Description	Appellate Authority	Revisional Authority	Appellate Tribunal	High Court	Supreme Court
Section	107	108	112	117	118
			maximum of Rs. 25,000		
Time limit to appeal	3 months + 1 month extension	Power exercisable only after 6 months but within 3 years from date of order {if no appeal filed}	3 months + 3 months extension	Within 180 days + condonation of delay without time limit	As per Code of Civil Procedure, 1908
Pre-deposit {mandatory}	100% of admitted due (with interest/penalty)+ 10% of disputed tax (before interest/penalty) subject to a maximum of 25 crore rupees	NA	100% of admitted due (with interest/penalty) + Additional 20% of disputed tax (before interest/penalty) subject to a maximum of 50 crore rupees	All tax dues are required to be deposited	All tax dues are required to be deposited
If assessee wins	Deposit refunded with interest	NA	Pre-deposit refunded with interest	Sums to be refunded	Sums to be refunded

Section 107 Appeals to Appellate Authority

This section pertains to **appeals to appellate authority by any person who is aggrieved** against decision or order passed by adjudicating authority. This section also provides for appeal by revenue against decision or order passed by adjudicating authority.

- The appeal is to be filed by the assessee **within a period of 3 months from the date of communication of decision or order** in Form GST APL-01, along with relevant documents either electronically or otherwise as notified by the Commissioner against a provisional acknowledgement. The grounds of appeal and form of verification must be duly signed and a certified copy of the decision or order is to be filed before the Appellate Authority within 7 days of filing the appeal electronically. Thereafter, a final acknowledgement indicating the appeal number shall be issued in Form GST APL-02 by the said authority. In such a situation the appeal shall be deemed to be filed on the date on which the provisional acknowledgement stands issued.
In case the said certified copy is submitted after a period of 7 days, the date of filing of appeal shall be the date of submission of such copy.
The appeal shall be treated to be filed only when the final acknowledgement, indicating the appeal number is issued.
- The Commissioner of Central / State or any Union territory with a view to satisfying himself about the legality or propriety of any order or decision direct a subordinate officer to file an application before the Appellate Authority within six months from the date of communication of decision or order** in Form GST APL-03, along with relevant documents either electronically or otherwise as notified against issue of an acknowledgement. A certified copy of the decision or order of the appeal is to be filed before the

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Appellate Authority within 7 days of filing the application electronically and an appeal number shall be generated accordingly.

- iii. The appellate authority in either of the above cases is empowered to **condone the delay up to a period of 1 month**.
- iv. **Appeal to be filed in prescribed form duly verified in prescribed manner along with**
 - Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and
 - pre-deposit of sum equal to 10% of remaining amount of tax in dispute subject to a maximum of 25 crore rupees (50 crores CGST+SGST/IGST).
- v. On payment of above amount, the recovery proceedings for balance amount are deemed to be stayed.
- vi. **Maximum 3 adjournments** shall be granted to a party on showing reasonable cause that is to be recorded in writing.
- vii. **Appellate authority may allow any additional grounds not specified in the grounds of appeal on being satisfied that the omission was not wilful or unreasonable.**
- viii. **Appellate authority to pass the order confirming, modifying or annulling the decision or order appealed against but shall not remand the case back to the adjudicating authority.**
- ix. Opportunity of being heard to be granted in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit after issuing show cause notice.
- x. The appellate authority has power to issue show cause notice in case it is of the opinion that any tax has not been paid or short paid or erroneously refunded or input tax credit is wrongly availed or utilised. The appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or 74.
- xi. Appellate authority need to hear and **decide the appeal**, wherever possible, **within a period of 1 year from the date of filing**.
- xii. Where the issuance of order is stayed by an order of a court or Tribunal, the period of such **stay shall be excluded in computing the period of one year**.
- xiii. Appellate authority to communicate the copy of order to the appellant, the respondent, the adjudicating authority, jurisdictional Commissioner of CGST, SGST and UTGST.
- xiv. The Appellate Authority shall, along with its order under sub-section (11) of section 107 of the Act, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

As per Rule 109 A, if order is passed by the Additional/Joint Commissioner then appeal will be filed with Commissioner (Appeals). If order is passed by the Deputy Commissioner/Assistant Commissioner /Superintendent then appeals will be filed with any officer not below the rank of Joint Commissioner (Appeals).

Example 1:

Case	Date of filing of appeal in Form GST APL-01 and issuance of provisional acknowledgement	Submission of certified copy of decision or order appealed against	Date of filing of appeal shall be
Case I	24.07.2018	28.07.2018	24.07.2018
Case II	24.07.2018	03.08.2018	03.08.2018

Example 2: Mr. A, wants to file an appeal to appellate authority against the order passed by the adjudicating authority, which was received on 10.01.2018. In this case, the company can appeal against such order by 09.04.2018 in Form GST APL-01 i.e., within 3 months from the date of communication of adjudicating authority.

Now, suppose due to some unforeseen circumstances, the company could not file the appeal within given time period. The appellate authority, may, after being satisfied as to existence of sufficient cause, condone the delay upto 09.05.2018 (i.e. 1 month from expiry of 3 months), within which time aggrieved person must file the appeal.

Example 3: Mr. X has been served with an order wherein demand of Rs. 5,00,000 has been alleged by the adjudicating authority. Mr. X, admits liability of Rs. 1,00,000 but decides to litigate the demand of balance amount, and hence file an appeal to the appellate authority. In this case, the amount of pre-deposit will be calculated as follows:

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(a) Demand admitted = Rs. 1,00,000

(b) Remaining Demand/Amount disputed = Rs. 4,00,000

10% of amount disputed i.e. (Rs. 4,00,000*10/100) = Rs. 40,000

Hence, the amounts of pre-deposit to be paid by Mr. X will be total of Rs. 1,40,000.

On amount of above amount of pre-deposit, the recovery proceedings for balance amount shall be deemed to be stayed.

Section 108 Power of Revisional Authority

- i. Revision authority on his own motion or upon information received by him or on request from the commissioner of State tax/UT, after examining the record of any proceeding, the Revisional Authority may stay the operation of any decision or order if he considers that such **decision or order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue.**
- ii. After giving the concerned person an opportunity of being heard and after making further necessary inquiry, the Revisional Authority may pass such **order within 3 years of passing of the said order sought to be revised including enhancing or modifying or annulling the said decision or order.**
- iii. The Revisional Authority **shall not exercise** such **revisionary powers** if
 - (a) **appeal is filed against the order to –**
 - a. Appellate Authority U/s.107
 - b. Appellate Tribunal U/s.112
 - c. High Court U/s.117
 - d. Supreme Court U/s.118
 - (b) **period of 6 months as specified in section 107 (2) has not expired or more than 3 years have expired after passing the decision or order**
 - (c) **the order has already been taken for revision at any earlier stage**
 - (d) **revisionary order has already been passed once.**
- iv. However, the Revisional Authority may pass an order on any point which has not been raised & decided in an appeal, referred to hereinabove, **within 1 year from the date of order passed in such appeal or within 3 years from the date of such order sought to be revised, whichever is later.**
- v. It may be noted that the said power of the revisional authority is subject to Section 121 of the CGST Act (i.e. non appealable decisions and orders). Thus, the revisional authority cannot revise the decision or order passed under the CGST Act/SGST Act/UTGST Act, by any officer subordinate to him, in the matters as prescribed in Section 121 of the CGST Act, which are non-appealable in GST.
- vi. Notification No. 74/2018 – Central tax Dated 31.12.2018 has inserted, new Rule 109B of the CGST Rules, which provides that where the Revisional Authority decides to pass an order in revision U/s 108, which is likely to affect the person adversely, the revisional authority shall serve on him a notice in Form GST RVN-01 and shall give him a reasonable opportunity of being heard. In addition, as per sub-rule (2) of rule 109B, a summary order is to be issued in Form GST Apl-04 clearly indicating the final amount of demand confirmed.
- vii. Every revision order shall be, subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.

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- viii. If the said decision or order involves an issue which is appealed in higher forum, the period spent between the date of the decision of the lower authority and the date of the decision of the higher authority shall be excluded in computing the period of limitation.
- ix. Where the issuance of an order is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in Section 108 (2) (b) i.e. 3 years.

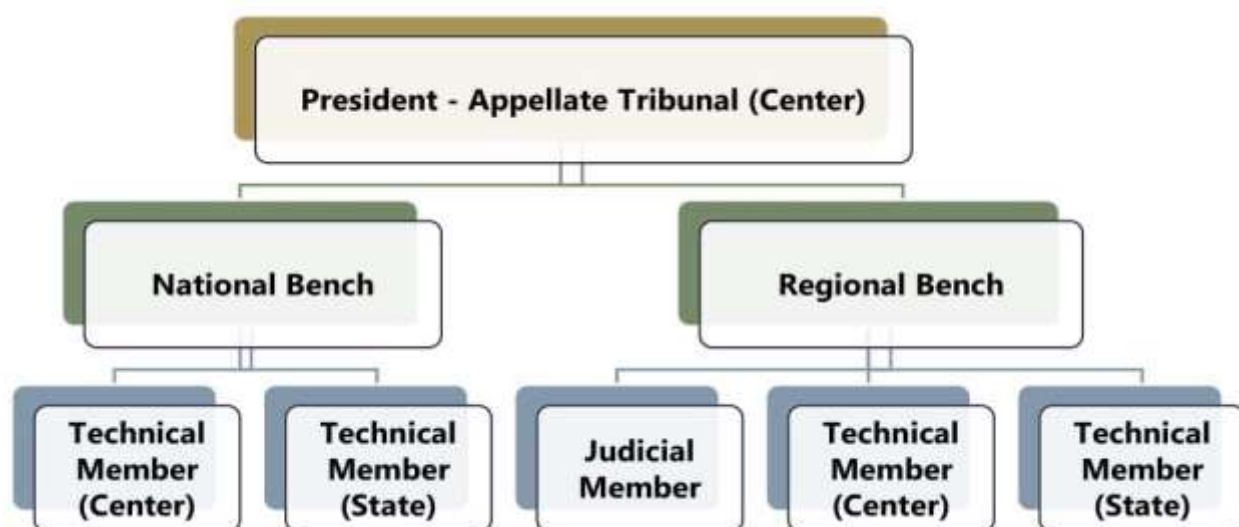
As per Notification No. 05/2020 – CT dated 13th January, 2020, CBIC authorises -

- (a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and
- (b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax, as the Revisional Authority under section 108.

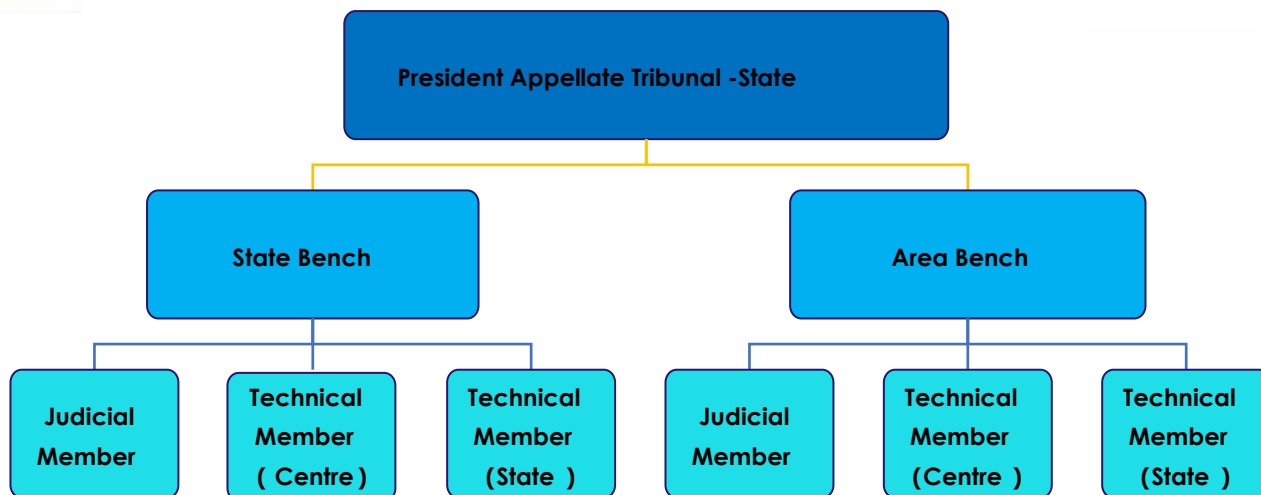
Section 109 Constitution of Appellate Tribunal and Benches thereof

A. Constitution and structure of Appellate Tribunal

- i. The law envisages constitution of a two tier Tribunal i.e. **National Bench/Regional Benches and the State Bench/ Area Benches**. Jurisdiction of the two constituents of the GST Tribunal is also defined.
- ii. If place of supply is one of the issues in dispute, then the **National Bench/ Regional benches** of the Tribunal will have jurisdiction to hear the appeal.
If the dispute relates to issues other than the place of supply, then the **State/Area Benches** will have the jurisdiction to hear the appeal.
- iii. An appeal from the decision of the **National Bench** will lie directly to the Supreme Court and an appeal from the decision of the **State Bench** will lie to the jurisdictional High Court on substantial questions of law.
- iv. A diagrammatic representation of the structure of the Appellate Tribunal is shown below:



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The appointments to the Tribunal and functioning shall be in the manner prescribed under sections 110 and 111 of the CGST Act. On ceasing to hold office, the appointees to the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

- v. 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.

However, any appeal where the tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed Rs. 5,00,000 and which does not involve any question of law may, with the approval of the President, be heard by a bench consisting of a single member.

Section 111 Procedure before Appellate Tribunal

- (1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. However, it shall be guided by the principles of natural justice and shall have power to regulate its own procedure.
- (2) The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) dismissing a representation for default or deciding it ex-parte;
 - (g) setting aside any order of dismissal of any representation for default or any order passed by it ex-parte; and
 - (h) any other matter which may be prescribed.

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- (3) Order of the Appellate Tribunal may be enforced in the same manner as if it were a decree made by a court in a suit pending therein. The Appellate Tribunal can send for execution of its orders to the court within the local limits of whose jurisdiction, —
 - (a) in the case of an order against a company, the registered office of the company is situated; or
 - (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.
- (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. 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.

Section 112 Appeals to Appellate Tribunal

- a. Appeal by the Assessee:
 - i. Any person aggrieved by an order of Appellate Authority or Revisional Authority may appeal to the Appellate Tribunal against such order **within 3 months from the date** on which the order sought to be appealed against is communicated to the person preferring the appeal. The tribunal can **condone the delay of up to 3 months** beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.
 - ii. Fees of filing and restoration of appeal: The fees for filing of appeal or its restoration shall be Rs. 1,000 for every Rs. 1 Lac of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of Rs. 25,000.
 - iii. Discretionary Power: The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or ITC involved, or the difference in tax or ITC involved, or the amount of fine, fee or penalty determined by such order, does not exceed Rs. 50,000.
 - iv. **Conditions for Pre-deposit - 20% of the disputed tax: No appeal shall be filed unless the appellant has paid –**
 - In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
 - A sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid U/s 107 (6), arising from the said order subject to a maximum of fifty crore rupees (100 crores CGST+SGST/IGST), in relation to which the appeal has been filed.

On pre-deposit of tax, the recovery proceedings shall be stayed till the disposal of the appeal.
- b. Departmental appeal:
 - i. Orders appealable to Appellate Tribunal [Section 112 (3)] : The commissioner may, on his own motion, or upon request from the State/UT Commissioner call for and examine the record of any order passed by Appellate Authority or Revisional Authority 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 6 months from the date on which the said order has been passed** for determination of such points arising out of the said order as may be specified by him.
 - ii. The Application so filed shall be dealt by the Appellate Tribunal as it were an appeal made against the order of Appellate Authority or Revisional Authority and all the provisions of the Act shall apply accordingly.
 - iii. **There is no requirement of making a pre-deposit in case of departmental appeal.**
- c. Other aspects:

Memorandum of cross objection to be filed within 45 days [Section 112 (5)]: On receipt of notice that an appeal has been preferred, the other party may, within 45 days of the receipt of notice from tribunal, file a memorandum of cross-objections against any part of the order appealed against and such

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memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the specified time limit.

Production of additional evidence before the Appellate Authority or the Appellate Tribunal [Rule 112]:

- i. **General bar on production of additional evidences [Rule 112 (1)]:** The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidences, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances namely: -
 - where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted, or
 - where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority, or
 - where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal, or
 - where the adjudicating authority or, as the case may be, the Appellate authority has made the order appealed against without giving sufficient opportunity to the appellant to produce evidence relevant to any ground of appeal.
- ii. No evidence shall be admitted unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.
- iii. The Appellate Authority or the Appellate Tribunal shall not make any evidence produced unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -
 - to examine the evidence or document or to cross-examine any witness produced by the appellant; or
 - to produce any evidence or any witness in rebuttal of the evidence produced by the appellant.

The Appellate Tribunal and its Benches are yet to be constituted in many States and Union territories under section 109 of the said Act as a result whereof, the said appeal or application could not be filed within the time limit and because of that, certain difficulties have arisen in giving effect to the provisions of the said section.

This Order may be called the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019

For the removal of difficulties, it is hereby clarified that for the purpose of calculating,-

(a) the "three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal" in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:-

- (i) date of communication of order; or
- (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;

(b) the "six months from the date on which the said order has been passed" in sub-section (3) of section 112, the start of the six months period shall be considered to be the later of the following dates:-

- (i) date of communication of order; or
- (ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

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According to Circular No. 132/2/2020 – GST dated 18th March 2020, hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

Section 113 Orders of Appellate Tribunal

- i. Appellate Tribunal to pass the order confirming, modifying or annulling the decision or order appealed against.
- ii. The Appellate Tribunal also has power to remand the case back to the appellate authority or the Revisional authority or the original adjudicating authority.
- iii. Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.
- iv. The Appellate Tribunal is empowered to amend its order to rectify any mistake apparent from record, However, tribunal may rectify its order if the mistake is brought to its notice by Commissioner or other party to appeal within period of 3 months of date of such order. Opportunity of being heard to be granted in case such rectification results into enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability.
- v. The Appellate Tribunal to hear and decide the appeal, as far as possible, within a period of 1 year from the date of filing.
- vi. The Appellate Tribunal to communicate the copy of order to appellate authority / Revisional authority / original adjudicating authority, the appellant, the jurisdictional Commissioner, Commissioner of State Tax or Union Territory Tax.
- vii. The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

Section 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.

Section 116 Appearance by authorised representative

This section provides for appearance by authorised representative in proceedings or appeals except in circumstances where personal appearance is required for examination on oath or affirmation.

- i. “Authorised representative” means –
 - relative or regular employee
 - Practising Advocate
 - Practising CA, CWA or CS
 - A retired government officer who had worked for not less than 2 years in a post not lower in rank

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- than Group-B gazetted officer
- Goods and Services Tax Practitioner
 - ii. Any person, who has retired or resigned after serving more than 2 years in the indirect tax departments of Government of India or any State Government as a gazetted officer, shall not be entitled to appear as authorised representative for a period of 1 year from the date of retirement or resignation.
 - iii. Any person,
 - who has been dismissed or removed from government service; or
 - who is convicted of an offence under CGST Act, SGST Act, IGST Act, UTGST Act or under erstwhile laws; or
 - who is found guilty of misconduct by the prescribed authority;
 shall not be qualified as authorised representative
 - iv. Any person, who has become insolvent, shall not be qualified as authorised representative during the period of insolvency.
 - v. Any disqualification under SGST Act or UTGST Act shall be construed as disqualification under CGST Act.

Section 117 Appeal to High Court



- i. High Court may admit an appeal if it is satisfied that the case involves a substantial question of law.
- ii. No appeal shall lie to High Court if such order is passed by National Bench or Regional Benches.
- iii. Appeal to be filed in the form GST APL 08, precisely stating the substantial question of law involved, within 180 days from the date of receipt of order appealed against accompanied by prescribed fee.
- iv. High Court is empowered to condone the delay in filing appeal.
- v. On being satisfied, High Court shall formulate a substantial question of law.
- vi. Appeal to be heard only on the question so formulated and the respondent shall be allowed to argue that the case does not involve such question.
- vii. The High Court may hear the appeal on any other substantial question of law not formulated by it after satisfying, for reasons to be recorded, of involvement of such question in the case.
- viii. The High Court may determine any issue which has not been determined or has been wrongly determined by the State Bench or Area Benches.
- ix. Appeal to be heard by a Bench of not less than 2 Judges of High Court and shall be decided in accordance with the majority of opinion of such Judges.
- x. Difference of opinion on any point shall be referred to one or more of the other Judges of High Court and such point shall be decided according to the opinion of majority of Judges who have heard the case including those who first heard it.
- xi. The effect of judgment of High Court shall be given on the basis of a certified copy of the judgment.
- xii. The provisions of Code of Civil Procedure relating to appeals to High Court shall apply to appeals under this section.
- xiii. Pre-deposit of all the tax dues is required to be made, otherwise the inherent power of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.

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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.



Section 119 Sums due to be paid notwithstanding appeal, etc.

The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding that an appeal has been preferred to High Court or Supreme Court, as the case may be.

Section 120 Appeal not to be filed in certain cases

The board may fix monetary limits for regulating the filing of appeal etc. The Central tax officer may file appeal etc. in any other case involving the same or similar issues or questions of law if monetary amount is more. No person, being a party in appeal or application shall content that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application. 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 departmental officer.

Section 121 Non-appealable decisions & orders

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 U/s 80](#) (Payment of tax & other amount in installment).

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Question & Answer

Q1. What is the time limit for filing appeal to the Appellate authority by a person aggrieved by any decision or order passed by an adjudicating authority? Whether this time limit can be extended?

A. A person aggrieved by any decision or order passed by an adjudicating authority may file an appeal to the Appellate Authority within 3 months from the date of communication of decision/order of adjudicating authority. The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay.

Q2. Section 113(3) of the CGST Act, 2017 provides that the Appellate Tribunal, may at any time within 3 months of the date of order, with a view to rectifying any mistake apparent from the record, amend any order passed by it. What would constitute "mistake apparent from record" for the purpose of this provision?

A. Failure to make into consideration the material evidence, which is present on record, would amount to a "mistake apparent on the face of the record". [CCEx V. Bharat Bijlee Ltd. 2006 (SC)]

When a decision rendered by the Apex Court is not considered, non-consideration of such binding precedent constitutes an error apparent on the face of the record. The binding decision of the Apex Court would cover even the period prior to the inception of such law during which the orders contrary to such ratio of the subsequent decision were passed [HLL V. CCEx, 2006 (Tri. LB)]

Other mistakes apparent on the face of the record, which can be rectified by the Tribunal in terms of section 113(3), can be typographical error, calculation mistakes, point raised in appeal but not considered, retrospective amendments in the statute, etc.

Q3. An assessee moved an application on 15th December 2018 under section 113(3) for rectification of mistake in order passed on 30th September 2018. The Tribunal took up the application on 15th May 2019 and dismissed the same on the ground that the Tribunal cannot entertain an application for rectification beyond a period of 3 months. Is this correct?

A. Section 113(3) states that the Appellate Tribunal may at any time within 3 months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it. Since, in the present case, the application has been made within 3 months from the date of the order, it is not relevant for the purpose of limitation as to when the Tribunal takes up the same for hearing and disposal. Therefore, in this case, the Tribunal cannot reject the application for rectification of mistake on the ground of limitation if application is made within time limit.

Q4. Discuss with the help of decided case, whether the re-appreciation of evidence on a debatable point by the GST Appellate Tribunal can be considered as rectification of mistake apparent on record u/s 113(3)?

A. No, re-appreciation of evidence by GST Appellate Tribunal on a debatable point cannot be considered to be rectification of mistake apparent on record u/s 113(3) of the CGST Act, 2017.

Supreme Court, in case of CCE V RDE Concrete India Pvt. Ltd. [2011] observed that a mistake apparent on record must be an obvious and patent mistake. It need not be established by a long-drawn process of reasoning. Arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

The Supreme Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier. Hence, the court opined that in pursuance of a rectification application, CESTAT cannot reappreciate the evidence and reconsider its legal view taken earlier.

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Q5. Can department file appeal in respect of same assessee, if in respect of some years, no appeal was filed involving identical dispute?

A. It was held in *C.K. Gangadharan V. CIT* [2008] (SC) that if the revenue has not filed an appeal against any order/judgement in one case, it would not be allowed to file an appeal in another case when the same issue is involved due to the reasons that it cannot pick and choose and certainty in law should be ensured.

However, the revenue can file an appeal in another case involving same/similar issue –

- Where there is just cause in doing so i.e. where appeal was not preferred earlier in view of small amount involved; or
- Where it is in public interest to do so; or
- For a pronouncement by higher court when divergent views are expressed by Tribunals/High Courts.

Section 120 provides that the Board may issue orders or instructions or directions fixing monetary limits for the purposes of regulating the filing of appeal, etc. by the Department. If Department has not filed an appeal, etc. as per circular fixing monetary limits, the Department may file any appeal, application or revision in any other case involving the same or similar issues or questions of law and the assessee cannot contend that the Department has accepted the decision on the disputed issue by not filing the appeal.

Q6. Where Commissioner of CGST feels that the order passed is not legal or proper, whether he can revise the order on his own?

A. The Commissioner cannot revise the order U/s 107. For CGST, as per Sec. 107(2), if the commissioner finds an order or decision (passed by an adjudication authority) to be not legal or proper, he can pass an order setting out the points for determination where he is of the view that the order is not legal and proper and directing a GST officer sub-ordinate to him to file an application to appellate authority. Such application is then treated by the appellate authority as if it were an appeal.

Q7. Does the AA have the power to remand the case back to the adjudicating authority for whatever reasons?

A. No. Section 107(11) specifically states that the AA shall, after making such inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against, but shall not refer the case back to the authority that passed the decision or order.

Q8. When the Tribunal is having powers to refuse to admit the appeal?

A. In cases where the appeal involves –

- tax amount or input tax credit or
- the difference in tax or the difference in input tax credit involved or
- amount of fine, fees or amount of penalty determined by such order,

does not exceed Rs 50,000/-, the Tribunal has discretion to refuse to admit such appeal. (Section 112(2))

Q9. Whether interest becomes payable on refund of pre-deposit amount?

A. Yes. As per Section 115 of the Act, where an amount deposited by the appellant under sub-section (6) of section 107 or under sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, as the case may be, interest at the rate specified under section 56 not exceeding 9% shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

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Q10. Compute the quantum of pre-deposit required to be made on U/s 107 of the CGST Act 2017 in each of the following independent case:

- (a) In an order Dated 18-10-2018 issued to ABC Ltd., the Joint Commissioner of central tax has confirmed a tax demand of Rs. 50,00,000. ABC Ltd. has admitted Rs. 5,00,000 as tax liability and intends to file an appeal with the Commissioner (Appeals) against tax demand of Rs. 45,00,000.
- (b) In an order Dated 18-10-2018 issued to XYZ Ltd., the Joint Commissioner of central tax has confirmed a tax demand of Rs. 50,00,000 and imposed a penalty of Rs. 5,00,000. XYZ Ltd. intends to file an appeal with the Commissioner (Appeals) against the said order.

A.

- (a) Section 107(6) of the CGST Act 2017, require an appellant before Appellate Authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order. Thus, ABC Ltd. has to pre-deposit Rs. 5,00,000 (admitted tax) and 10% of Rs. 45,00,000 (tax in dispute) = Rs. 9,50,000.
- (b) Section 107(6) of the CGST Act 2017, require an appellant before Appellate Authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order. In this case since entire amount of tax demanded is in dispute, hence XYZ Ltd. has to pre-deposit 10% of Rs. 50,00,000 = Rs. 5,00,000.

Q11. Whether other party could file cross objections against the appeal preferred by the assessee or by the department?

A. On receipt of notice that an appeal has been preferred under section 112, other party against whom an appeal is preferred, could file a cross objection to the appeal even though he has not preferred an appeal. A Memorandum of Cross-Objections have to be filed within 45 days from the date of receipt of the notice of appeal in FORM GST APL-06. The Tribunal shall dispose of the cross objections as if it is an appeal.

Q12. Whether appeal / application / cross objections filed beyond the time limit would be entertained?

A. Tribunal has been conferred with powers to condone the delay upto 3 months, beyond the period of 3 months or 6 months in case of filing of appeals, where sufficient cause for the delay is shown. Similarly, delay upto 45 days could be condoned by the Tribunal in filing the memorandum of cross objections where sufficient cause for the delay is shown.

Q13. Whether interest becomes payable on refund of pre-deposit amount?

A. Yes. As per sec 115 of the Act, where an amount deposited by the appellant under section 107(6) or under section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, as the case may be. 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.

Q14. Whether the Tribunal has power to rectify / amend the orders passed by it?

A. Yes, the Tribunal may amend any order passed by it under in terms of Section 113(1) so as to rectify any mistake apparent from the record. The Hon'ble Tribunal could undertake rectification on its own or on application by either of the parties to the appeal (by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal). The application for rectification shall be made within a period of three months from the date of the Order sought to be rectified.

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However, 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 section 113(3), unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

Q15. What are the orders against which appeal could be preferred before the Supreme Court?

A. Following orders could be challenged before the Supreme Court:

- a) Order passed by the National Bench or Regional Benches of the Appellate Tribunal; or (no appeal in High Court)
- b) 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.

Q16. Who is an Appellate Authority?

A. "Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107. Section 107 provides that appeal shall be preferred before such Appellate Authority as may be prescribed. Rule 109A provides that for the purpose of appeal, an Appellate Authority shall be:

- (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
- (b) Any officer not the below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.

Q17. Under what circumstances Commissioner could direct the Officer to prefer an appeal against the order of the adjudicating authority?

A. The Commissioner may, on his own motion, or upon request from the Commissioner of State tax Commissioner of Union Territory tax, call for and examine the records of any proceeding in which an adjudicating authority has passed any decision or order under the CGST Act or the SGST Act or the UTGST Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order. The Commissioner may by an order, direct any Officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Q18. What type of order could the Appellate Authority pass? Whether Appellate Authority could refer the case back to Adjudicating Authority?

A. The Appellate Authority may pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. The order shall be in writing giving details as to determination. The Appellate Authority shall, along with its order under section 107(11), issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed. However, the Appellate Authority does not have power to refer the case back to the Adjudicating Authority that passed the said decision or order.

Q19. Whether Order of the Appellate Authority could also be stayed by Revisional Authority?

A. The Order which has been subject to an appeal before the Appellate Authority (section 107) as well as orders of the Appellate Authority which are appealed before the Tribunal cannot be stayed by the Revisional Authority. However, the Revisional Authority could pass an order under revisionary power on any point which has not been raised and decided in an appeal before Appellate Authority. Such, revision order could be passed within

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1 year from the date of the order of the Appellate Authority or 3 years from the date of the original order, whichever is later.

Q20. When a Revisional Authority cannot exercise its powers?

A. Revisional authority shall not exercise its powers, in case of following:

- When the order has been subject to an appeal before the adjudicating authority (under section 107) or the Tribunal (under section 112) or the High Court (under section 117) or the Supreme Court (under section 118); or
- If the period of 6 months as specified under 107(2) for preferring an appeal by department before Appellate Authority has not yet expired or where more than three years have expired after the passing of the decision or order sought to be revised; or
- where the order has already been taken for revision under section 108 at any earlier stage; or
- revisionary order passed under section 108(1).

Q21. What is the Constitution of National Appellate Tribunal and how the same is constituted? Where the National Bench and Regional Bench shall be located?

A. The Central Government shall on the recommendation of the GST Council by Notification constitute Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal) for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

National bench shall be located at New Delhi. The Central Government on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required.

Q22. What is the composition of National Bench and Regional Benches?

A. National Bench shall be headed by the National president along with one Technical member (Centre) and one Technical Member (State). Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

Q23. What is jurisdiction of National or Regional Benches of the Appellate Tribunal?

A. National 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.

Q24. What is State Bench or Area Bench?

A. The Government, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal, for exercising the powers of the Appellate Tribunal within the concerned State or Union territory. 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.

Q25. What is jurisdiction of State Bench or Area Bench?

A. State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in all cases other than those involving matters where one of the issues involved relates to the place of supply.

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Q26. What is the composition of State Bench and Area Benches?

A. Each State Bench and Area Benches 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.

Q27. Whether any matter could be heard by bench consisting of members less than 3 as set out above?

A. Yes, 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. Further, 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 Rs. 5 Lakhs 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.

Q28. What would be consequence where there is a difference of opinion on any issue among the members of the bench?

A. If the Members of the Bench (National/Regional/State/Area) 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.

Q29. Can the Tribunal reject to entertain an appeal based on the monetary limits?

A. Yes. The Tribunal has been conferred with discretion to refuse to admit an 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 Rs. 50,000/-

Q30. Which are the matters on which the appeal against order of the Tribunal could be preferred before the High Court?

A. Appeal shall lie to the High Court against an Order passed by the State Bench or Area Benches of the Tribunal.

Q31. Whether all decisions and orders can be appealed?

A. No. in terms of Section 121, orders listed below cannot be appeal against:

- (a) An order of the Commissioner or other competent authority for transfer of proceeding from one officer to another officer; or
- (b) An order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) An order sanctioning prosecution under this Act; or
- (d) An order passed under section 80 relating to payment of tax, interest and other dues in installments.

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Q32. XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 01-11-2017 under section 73 of the CGST Act, 2017 wherein it was decided as follows:

Particulars

CGST and SGST due (Total) Rs. 6,00,000

Interest @ 18% p.a. for number of delayed days

Penalty Rs. 60,000

The assessee filed an appeal before the Appellate Authority on 26-11- 2017.

Case I How much the company has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017?

Case II Whether your answer would be different if the assessee appeals only against part of the demanded amount say Rs. 4,00,000 and admits the balance liability of tax amounting to Rs. 2,00,000 arising from the said order.

(CA Final May 2018 New)

A. Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed before Appellate Authority, unless the appellant pays:-

- (a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- (b) 10% of remaining tax in dispute arising from the impugned order.

Thus, in Case-I, XY Company has to make a pre-deposit of 10% of Rs. 6,00,000, which is Rs. 60,000 assuming that XY Company disagrees with the entire tax demanded.

However, in Case-II, since XY Company admits the tax liability of Rs. 2,00,000 and disputes the tax demanded of only Rs. 4,00,000, it has to make a pre-deposit of:

- (i) Rs. 2,00,000 + Rs. 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and
- (ii) 10% of Rs. 4,00,000 which is Rs. 40,000.

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Chapter 23: - Advance Ruling

Section 97	Questions for which advance ruling can be sought
Section 96 & 99	Authority for Advance Ruling (AAR) and Appellate Authority for Advance Ruling (AAAR)
Section 98	Procedure for obtaining advance ruling
Section 100 & 101	Appeals against order of AAR to the Appellate Authority
Section 102	Rectification of Mistakes
Section 103	Applicability of Advance Ruling
Section 104	Advance Ruling to be void in certain circumstances
Section 105 & 106	Powers and Procedure of AAR and AAAR

Section 97 Questions for which advance ruling can be sought

- Classification of any goods or services or both;
- Applicability of a notification issued under the provisions of this Act;
- Determination of time and value of supply of goods or services or both;
- Admissibility of input tax credit of tax paid or deemed to have been paid;
- Determination of the liability to pay tax on any goods or services or both;
- Whether applicant is required to be registered;
- 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 96 Authority for Advance Ruling (AAR)

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.

The Government shall appoint an officer not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. The authority shall consist of 1) one member from amongst the officers of CGST; and 2) one member from amongst the officers of SGST/UTGST.

Section 99 Appellate Authority for Advance Ruling (AAAR)

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.

The Appellate Authority shall consist of 1) Chief Commissioner of CGST as designated by the Board; and 2) the Commissioner of SGST/UTGST having jurisdiction over the applicant.

This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory. It is also for this reason that questions on determination of place of supply cannot be raised with the AAR or AAAR.

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Section 98 Procedure for obtaining advance ruling

- i. The applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner.
- ii. Upon receipt of an application, the Authority shall send a copy of application to the concerned officer in whose jurisdiction the applicant falls and call for relevant records.
- iii. The Authority may, after examining the application and the records called for and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, by order, either admit or reject the application.
- iv. Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an application under any of the provisions of this Act.
- v. If the application is rejected, it should be by way of speaking order giving the reasons for rejection.
- vi. If the application is admitted, the AAR shall pronounce its ruling within 90 days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned department officer.
- vii. Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST /SGST.
- viii. If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.
- ix. 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.

Section 100 & 101 Appeals against order of AAR to the Appellate Authority

- i. If the applicant is aggrieved with the ruling of the AAR, he can file an appeal with AAAR. Similarly, if the jurisdictional officer of CGST / SGST does not agree with the finding of AAR, he can also file an appeal with AAAR.
- ii. Any appeal must be filed within 30 days from the receipt of the advance ruling. AAAR has the power to condone the delay of 30 days on being shown the sufficient cause for the delay.
- iii. The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- iv. If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.
- v. 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 & to the Authority.

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Section 102 Rectification of mistakes

The law gives power to AAR and AAAR to amend their order to amend any order passed by them under section 98 or section 101 of the CGST / SGST Act, 2017, 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. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.

Section 103 Applicability of Advance Ruling

An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in that State. It is only limited to the person who has applied for an advance ruling. There is no specific fixed time period for advance ruling validity; it has been provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.

Section 104 Advance Ruling to be void in certain circumstances

However, an advance ruling shall be held to be **ab initio void** if the AAR or AAAR finds that the advance ruling was obtained by the applicant by **fraud or suppression of material facts or misrepresentation of facts**. An order declaring advance ruling to be void can be passed only after hearing the applicant.

Example 1: ABC Ltd. sought an advance ruling regarding the taxability of "Kumkum" manufactured by them & used for pooja & other religious purposes as claimed by them. The authority ruled in favour of ABC Ltd. and exempted their product "Kumkum" from the levy of GST as a pooja material. Later, it brought into the notice of the Authority that the said product is actually used as a colorant in the cloth industry as a dying agent. After giving opportunity, the authority can now pass an order u/s 104, declaring the advance ruling as void ab initio.

Section 105 & 106 Powers & Procedure of AAR and AAAR

- i. Both the Authority and the Appellate Authority are vested with the powers of a civil court under the Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, and compelling production of books of account and other records.
- ii. Both the Authority and the Appellate Authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973.
- iii. Any proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code, 1860. The both authorities have the power to regulate their own procedure.

A new rule 107A has been inserted vide N/N 55/2017-CT, Dated 15.11.2017, which states that in respect of any process or procedure prescribed in Chapter XII, 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 the 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 the CGST Rules.

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Question & Answer

Q1. What is the objective of having a mechanism of Advance Ruling?

A. The broad objective for setting up such an authority is to:

- provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- attract Foreign Direct Investment (FDI);
- reduce litigation;
- pronounce ruling expeditiously in transparent and inexpensive manner.

Q2. Whether Appeal can be filed before High Court or Supreme Court against the ruling of Appellate Authority for Advance Rulings?

A. The CGST /SGST Act do not provide for any appeal against the ruling of Appellate Authority for Advance Rulings. Thus, no further appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant. However, writ petition may lie before Hon'ble High Court or the Supreme Court.

Q3. Can advance ruling be applied for after supply of goods and/or services?

A. Yes, as per section 95 (a) of the Act, application can be made for advance ruling in relation to the supply of goods and/or services, being undertaken by applicant.

Q4. When AAR shall not admit the application for advance ruling?

A. AAR shall not admit the application where the issue raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Q5. Are the tax authorities bound by the advance ruling?

A. Only the jurisdictional officer/concerned officer, in respect of applicant who has sought advance ruling is bound by such rulings pronounced.

Q6. What are the powers vested with the authority and the appellate authority?

A. The authority or the appellate authority shall have all the powers of a civil court to exercise the following powers:

- (i) discovery and inspection;
- (ii) enforcing attendance of any person and examining him on oath;
- (iii) issuing commissions and compelling production of books of account and other records.

Q7. Can the Ruling issued by the AAR or order passed by the AAAR be rectified?

A. In case there is any error apparent on the face of the records, the AAR or AAAR as the case may be, can amend the original order passed by it, if such error is noticed by the AAAR or AAAR on its own record or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant, within a period of 6 months from the date of said order. However, 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.

Example: In case AAR or AAAR has decided the advance ruling and issued the order on 31st July 2018 and later on 28th September 2018, it has been noticed by the authority itself (or any concerned officer or any jurisdictional officer or applicant) that there is some mistake apparent on record then the authority may rectify such order. The tax rate decided in earlier order was taken as 18% instead of 28%, then before rectifying such order the Authority shall provide the opportunity of hearing to the applicant.

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Chapter 24: - Miscellaneous Provisions

Section of CGST	Particulars
Section 144 Presumption as to documents in certain cases	Where any document— - is produced by any person under this Act or any other law for the time being in force; or - has been seized from the custody or control of any person under this Act or any other law for the time being in force; or - has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall— (a) unless the contrary is proved by such person, presume— - the truth of the contents of such document; - that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested; (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.
Section 145 Admissibility of Micro Films, Facsimile copies of Documents and Computer Printouts as documents and as evidence	The Micro films, facsimile copies and computer printouts shall be deemed to be document and is admissible as evidence. In any proceedings, where it is desired to give a statement in evidence, a certificate identifying the document containing the statement and describing the manner in which it was produced and giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer, shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
Section 146 Common Portal	The common portal (www.gst.gov.in) would facilitate registration, tax payment, filing of returns, computation and settlement of integrated tax and other prescribed purposes. www.ewaybillgst.gov.in would facilitate furnishing electronic way bill (e-way bill).
Section 147 Deemed exports	The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange if such goods are manufactured in India. The Central Government vide Notification No. 48/2017 Dated 18th Oct'17 has notified the following supplies as deemed exports: - Supply of goods by a registered person against Advance Authorisation Provided that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply,; Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.

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Section of CGST	Particulars
	- Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation. - Supply of goods by a registered person to EOU. - Supply of gold by a bank or PSU specified in the Notification No. 50/2017-Customs, Dated the 30th June 2017 (as amended) against Advance Authorisation.
Section 148 Special procedure for certain processes	The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.
Section 149 Goods & Service Tax Compliance Rating	- Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act. - The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed. - The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.
Section 150 Information Return	<i>Covered in Chapter 13 Returns</i>
Section 151 Power to collect statistics	The Commissioner may, by way of a notification, direct collection of statistics for the purpose of better administration of the Act. After issuance of such notification, the Commissioner or any person authorized by Commissioner in this regard may call all concerned persons to furnish such information or return relating to any matter in respect of which statistics is being collected.
Section 152 Bar on disclosure of information	There is bar on publication and use of information of any individual return furnished u/s 150/151 relating to a particular person and no such information shall be used for the purpose of any proceedings under this Act. Similarly, there is bar on access to any information or any individual return referred to in Sec. 151. However, this bar is not applicable to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.
Section 153 Taking assistance from an expert	Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.
Section 154 Power to take samples	The Commissioner or an officer authorized by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.
Section 155 Burden of proof	Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.
Section 156 Persons deemed to be public servants	All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.
Section 157 Protection of	Immunity from any legal or departmental proceedings is provided to the GST officers and officers of the Tribunal for the acts done in good faith under the provisions of this Act. Actions taken in exercise of official functions cannot result in liability devolving on the

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Section of CGST	Particulars
action taken under this Act	officers. It is this protection that officers enjoy while exercising authority vested in the law without fear or favour.
Section 158 Disclosure of information by a public servant	(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court) or in any record of any proceedings under this Act, save as provided in Section 158 (3), shall not be disclosed. (2) No court shall require any officer appointed or authorized under this Act to produce before it or to give evidence before it in respect of particulars referred to in Section 158 (1). (3) Nothing contained in this section shall apply to the disclosure of information – - For prosecution. - For carrying out the objects of the Act. - For service of notice or recovery of demand. - For furnishing to Court in a proceeding where Government is a party. - For audit of tax receipts or refunds. - For inquiry into the conduct of GST officer. - For enabling levy/realization of any tax or duty. - By lawful exercise of powers. - For inquiry into a charge of misconduct by any professional. - For data entry on automated system. - For any other law. - In public interest.
Section 159 Publication of information in respect of persons in certain cases	If the commissioner or any authorized officer, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it think fit. No publication shall be made in respect of penalty till disposal of appeal if the same has been filed or time limit for filing appeal has not expired. In this case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorized by him in this behalf, circumstances of the case justify it.
Section 160 Assessment proceedings, etc., not to be invalid on certain grounds	Assessment, re-assessment, etc. shall not to be invalid merely on grounds of procedural infractions. The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.
Section 161 Rectification of errors apparent on the face of record	Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

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	Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document: Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission: Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.
Section 162 Bar on jurisdiction of civil courts	Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.
Section 163 Levy of fee	Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.
Section 164 Power of Government to make rules	(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act. (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules. (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force. (4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.
Section 165 Power to make regulations	The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.
Section 166 Laying of rules, regulations & notifications	a. The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government. b. Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament. c. It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions. d. Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form. e. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.
Section 167 Delegation of powers	The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.
Section 168 Power to issue instructions or directions	(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

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Section of CGST	Particulars
	(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (1) of section 44, sub-sections (4) and (5) of section 52, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board. CBIC, vide Circular no. 122/41/2019-GST dated 05.11.2019, had implemented a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by its officers to taxpayers and other concerned persons with effect from 08.11.2019. As an initial step, CBIC has mandated mentioning of DIN for specified documents like search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry. The purpose of generation and quoting of DIN is to create a digital directory for maintaining a proper audit trail of such communication. Importantly, it would provide the recipients of such communication a digital facility to ascertain their genuineness. The genuineness of communication can be ascertained by recipient by entering the DIN in a window VERIFY CBIC-DIN on www.cbic.gov.in. The digital platform for generation of DIN is hosted on the Directorate of Data Management (DDM)'s online portal "cbicddm.gov.in". DIN in exceptional circumstances were exempted. However, such communications should expressly state that it has been issued without a DIN. The exceptional circumstances are – - when there are technical difficulties in generating the electronic DIN, or - when communication regarding investigation/enquiry, verification etc. is required to be issued at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties. All other communications except in exceptional circumstances which does not have DIN mentioned on it shall be treated as invalid and shall be deemed to have never been issued. Any communications issued without an electronically generated DIN in the exceptional circumstances as mentioned above shall be regularized with 15 working days of its issuance, by - obtaining the post facto approval of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN; - mandatorily electronically generating the DIN after post facto approval; and - printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file. The format of the DIN shall be CBIC-YYYY MM ZCDR NNNNNN where, a) YYYY denotes the calendar year in which the DIN is generated, b) MM denotes the calendar month in which the DIN is generated, c) ZCDR denotes the Zone-Commissionerate-Division-Range Code of the field formation /Directorate of the authorised user generated the DIN, d) NNNNNN denotes 6 digit alpha-numeric system generated random number. Circular 128/47/2019-GST dated 23.12.2019, CBIC has mandated electronic generation and quoting of DIN in respect of all communications (including emails) sent to tax payers and other concerned persons by an office of the CBIC across the country. The same is made effective from 24.12.2019. CBIC has also standardized the formats of search authorizations, summons, arrest memos, inspection notices etc. issued by GST/Central Excise/Service Tax formations across the country. CBIC directs that all field formations shall use the standardized format with effect from 01.01.2020.
Section 169 Service of notice in certain circumstances	(1) <u>Manner of Service:</u> Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any of the following methods, namely:- by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to

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Section of CGST	Particulars
	appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or (d) by making it available on the common portal; or (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice. (2) <u>Deemed Service:</u> Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provide in section 169 (1). (3) <u>Deemed service in case of registered post or speed post:</u> When such decision, order summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.
Section 170 Rounding off of tax, etc.	The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is 50 paise or more, it shall be increased to Rs. 1 and if such part is less than 50 paise it shall be ignored.
Section 171 Anti-profiteering measure	It mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed to the recipient by way of commensurate reduction in prices. National Anti-Profiteering Authority is therefore being constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him. Where the Authority referred above, after holding examination as required, comes to the conclusion that any registered person has profiteered, such person shall be liable to pay penalty equivalent to ten percent 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. The National Anti-Profiteering Authority shall be a five member committee consisting of a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and four Technical Members who are or have been Commissioners

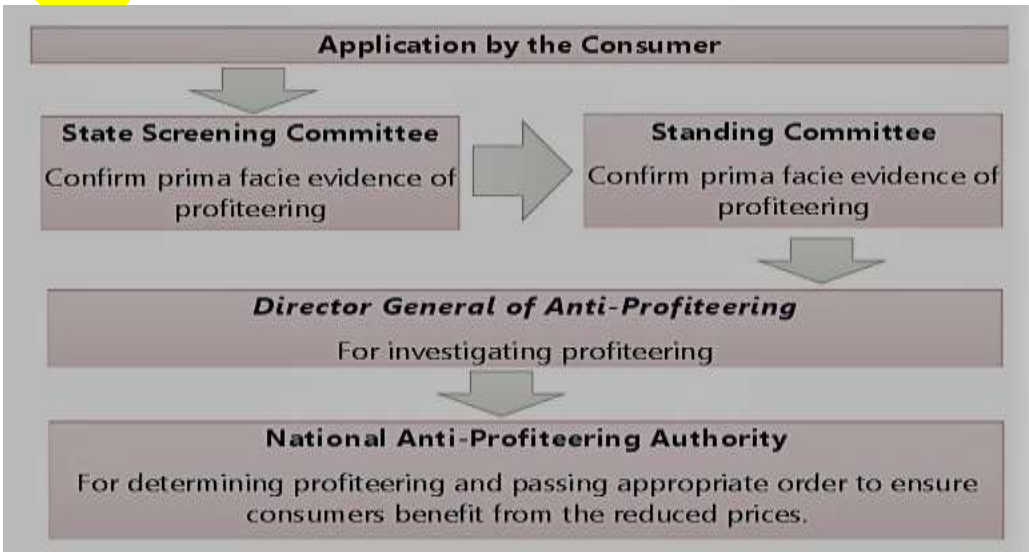
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Section of CGST	Particulars
	of State tax or central tax for at least one year or have held an equivalent post under earlier laws. The Authority shall cease to exist after the expiry of four years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise. <u>Duties of Authority:</u> It shall be the duty of the authority- I. to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices II. to identify the taxpayer who has not passed on the benefit III. to order a. reduction in prices b. return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be. If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund; c. imposition of penalty d. cancellation of registration IV. to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter <u>Process followed by the Authority</u> <u>Application to the Authority:</u> All applications from interested parties on issues of local nature shall first be examined by the State Level Screening Committee. On being satisfied that the supplier has not passed on the benefit, the Screening Committee will forward the application with its recommendations to the Standing Committee on Anti-profiteering. If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation. <u>Investigation:</u> Directorate General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter). The evidence or information presented to Directorate General of Anti-profiteering by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis. Directorate General of Anti-profiteering can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Anti-profiteering, or an

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Section of CGST	Particulars
	officer authorized by him will have the power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding. Directorate General of Anti-profiteering will complete the investigation within a period of 6 months or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as allowed by the Standing Committee. Upon completion of the investigation, Directorate General of Anti-profiteering will furnish to the Authority, a report of its findings along with the relevant records. <u>Order of the Authority</u> 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- - reduction in prices; - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent, from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be; - the deposit of an amount equivalent to fifty percent of the amount determined under the above clause along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted under section 57 and the remaining fifty percent 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; - imposition of penalty as specified under the Act; and - cancellation of registration under the Act. 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. {Rule 133 (3)- Substituted vide Notification No. 26/2018-CT Dated 13.06.2018}  <pre> graph TD A[Application by the Consumer] --> B[State Screening Committee Confirm prima facie evidence of profiteering] B --> C[Standing Committee Confirm prima facie evidence of profiteering] C --> D[Director General of Anti-Profiteering For investigating profiteering] D --> E[National Anti-Profiteering Authority For determining profiteering and passing appropriate order to ensure consumers benefit from the reduced prices.] </pre>

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Section of CGST	Particulars
	The following are noteworthy in this regard: - Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount. - The Authority will pass order within 6 months from the date of the receipt of the report from the Directorate General of Anti-profiteering. - The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1) of rule 133. - Notwithstanding anything contained in sub-rule (4) of rule 133, where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub rule (1) of rule 133, direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules. The investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry. - A minimum of three members of the Authority shall constitute quorum at its meeting. If opinion differ then decision will be taken by majority. If equal votes, the Chairman shall have the second or casting vote. - An opportunity of being heard will be given, if the interested parties request for it in writing. - Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount. - If the eligible person (i.e., the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.
Section 172 Removal of difficulties	(1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty: Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act. (2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.
Section 173 Amendment of Act 32 of 1994	Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.
Section 174 Repeal & Saving	(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles

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Section of CGST	Particulars
	and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed. (2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not— - revive anything not in force or existing at the time of such amendment or repeal; or - affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or - affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts: Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or - affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or - affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed; - affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed. (3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

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Section of IGST	Particulars
Section 20 Application of provisions of CGST Act	Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,— (i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act: Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent from the payment made or credited to the supplier: Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies: Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier: Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties. Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.

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Section of IGST	Particulars
Section 17 Apportionment of tax and settlement of funds	<u>Supplies in respect of which the IGST shall be apportioned</u> Sub-section (1) of section 17 lays down that in respect of the IGST paid on the following supplies of goods and/or services, the IGST shall be apportioned: - inter-State supply to an unregistered person or to a registered person paying tax under composition scheme; - inter-State supply where the registered person is not eligible for input tax credit; - inter-State supply made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made; - import by an unregistered person or by a registered person paying tax under composition scheme; - import where the registered person is not eligible for input tax credit; - import made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received. Thus, fundamentally IGST shall be apportioned only in respect of those supplies where the input tax credit cannot be availed and thus, the tax revenue finally accrues to the exchequer. <u>Methodology of apportionment</u> The IGST paid on the supplies mentioned above shall be apportioned as under: - The amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government. - The balance amount of IGST remaining in the integrated tax account shall be apportioned to the State where such supply takes place and to the Central Government if such supply takes place in a Union territory. If the place of such supply made by any taxable person cannot be determined separately, the balance amount shall be apportioned to each of the States/Central Government (in relation to Union territories) in proportion to the total supplies made by such taxable person to each of such States/Union territories in a financial year. If the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as SGST/UTGST by the respective State/ the Central Government during the immediately preceding financial year. The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections. Thus, essentially, the new sub-section (2A) provides for apportionment of IGST in respect of B2B supplies wherein input tax credit has been taken by the recipients. The interest, penalty and compounding amount realized in connection with the IGST shall also be apportioned in the similar manner.

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Section of IGST	Particulars
	The Central Government shall transfer the amount apportioned to it to the CGST account or UTGST account, as the case may be and the amount apportioned to the State Government(s) to the SGST account of the respective States.
Section 17A Transfer of certain amounts	Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed.
Section 18 Transfer of ITC	- When IGST credit is utilized for payment of CGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the CGST account. - When IGST credit is utilized for payment of UTGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the UTGST account. - When IGST credit is utilized for payment of SGST, the amount collected as IGST shall stand reduced by the amount equal to such credit and shall be apportioned to the appropriate State Government. The Central Government shall transfer the amount so apportioned to the account of the appropriate State Government. - Appropriate State means the State or Union territory where a taxable person is registered or is liable to be registered under CGST Act.

Question & Answer

Q1. Is there any condition that consideration must be received in foreign currency for deemed export goods?

A. There is no condition that consideration for goods notified as deemed exports must be received in convertible foreign exchange. The consideration may be received in Indian Rupees also.

Q2. Whether imported goods, supplied 'as such' qualify for deemed exports?

A. Only goods manufactured in India, which are notified by Central Government qualify to be treated as deemed exports. Thus, goods notified u/s 147, if imported do not qualify as deemed exports, if they are supplied 'as such'.

Q3. Whether goods notified u/s 147, if manufactured in India from imported goods qualify for the benefit of deemed exports?

A. Provisions of Section 147 apply to 'goods manufactured in India'. There is no restriction that raw materials required for manufacture of notified goods must also be manufactured in India. Hence notified goods, if manufactured from imported goods would qualify as deemed exports.

Q4. Who can rectify a mistake apparent on record u/s 161?

A. Any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document.

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