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What Our Students have to say....

BALAJI R

Scored exemption in 2 subjects. Thanks and respect to my beloved faculties Sathya Sir, Suraj Sir, Yogita Mam, Varun Sir, Shiva Teja Sir, Pranay Sir, IndigoLearn team and forum friends.

Ahil Varshan

Thank you so much
It is becaus of you Tax classes I was able to pass in Paper 4 The GST fast track course of Shiva Teja sir helped me a lot

GURRAM JANVITHA

Thanks to Shiva Teja Sir, Suraj Sir, Sathya Sir. Had a great journey with IndigoLearn.

Suhani Kochar

Very well explained sir
Thank you so much sir

Sai Suparna Puttu

Thank you for your support and blessing to us.

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Soniya S

You have been a great support to my success...I successfully cleared my group-1 exam especially taxation with the help of those classes I could clear exam..
Thank you so much Indigolearn

Preethi S

Taxation was very hard to undersatnd for me in my 1st attempt. But thanks Shiva Teja Sir for exceptional Taxation lectures, i scored 61. I would strongly recommend him. Your passion and clear explanations made learning enjoyable.

Prachi Khetal

Thankyou so much sir for this video lec, it is really very helpful.

Abhiram

I have taken taxation revision class for ca inter. From past 2 attempts I failed and got low marks is tax but in May 2024 I have secured 72 marks in taxation that is because of the detailed revision class by ca shiva teja sir, it helped me a lot while revising for the tax

Disclaimer

This book is designed for students pursuing CA Final course, who are appearing for the **Indirect Taxation** exam in **May-26 or afterwards**. The content in the book is not in the order provided by ICAI to ensure logical and comprehensive learning.

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1. GST IN INDIA – AN INTRODUCTION

Contents

- Direct and Indirect Taxes
- Genesis of GST in India
- Framework of GST
- GST Council
- Deficiencies of ersytwhile Acts
- Features of GST

Although this Chapter has been deleted by ICAI from May 24 attempt onwards. However, a part of the chapter has been included under the chapter of supply as an Annexure, it is recommended that students must study this chapter since it will help them having a strong base in understanding the GST related concepts.

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1. INTRODUCTION

- **Direct Taxes**: A direct tax is a kind of charge, which is imposed directly on the taxpayer and paid directly to the Government by the persons (juristic or natural) on whom it is imposed. A direct tax is one that cannot be shifted by the taxpayer to someone else. A significant direct tax imposed in India is income tax.

- **Indirect Taxes**: If the taxpayer is just a conduit and at every stage the tax- incidence is passed on till it finally reaches the consumer, who really bears the brunt of it, such tax is indirect tax. An indirect tax is one that can be shifted by the taxpayer to someone else.

- Also called consumption taxes, they are regressive in nature because they are not based on the principle of ability to pay.

- Indirect taxation in India witnessed a paradigm shift on **1st of July, 2017** with usherance into a unified indirect tax regime wherein a large number of Central and State indirect taxes were amalgamated into a single tax – Goods and Services Tax (GST).

- The introduction of GST has been a very significant step in the field of indirect tax reforms in India. There are several Central and State taxes which got subsumed in GST.

- GST extends to whole of India ***including the State of Jammu and Kashmir***.

India – covers

- Its Territory,
- Territorial waters (Up to 12 nautical miles)
- Continental shelf (Up to 200 nautical miles)
- Exclusive Economic Zone
- Soil under the water
- And air space above territory and territorial waters.

2. GENESIS OF GST IN INDIA

In the year 2000, the then Prime Minister mooted the concept of GST and set up a committee to design a Goods and Services Tax (GST) model for the country

In 2003, the Central Government formed a task force under Vijay Kelkar, known as Kelkar committee which strongly recommended fully integrated GST on national basis. But GST missed several deadlines.

The Union Finance Minister, Shri P. Chidambaram, while presenting the Union Budget (2006-2007), announced that GST would be introduced from April 1, 2010.

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In 2014, the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST by the then Finance minister, Mr. Arun Jaitley.

on 27th March, 2017, the GST bill was introduced in Lok Sabha and Rajya Sabha

on 29th March, 2017, GST Act was passed by Parliament

on ***12th April, 2017***, President's assent was received

With effect from ***1st July, 2017***,
the historic indirect tax reform – ***GST was introduced***

- France was the first country to implement GST in 1954.

- Presently, more than 160 countries have implemented GST in some form or the other because this tax has the capacity to raise revenue in the most transparent and neutral manner.

3. FRAMEWORK OF GST

3.1 Dual GST

- India has adopted a Dual GST model in view of the federal structure of the country.
- Consequently, Centre and States simultaneously levy GST on taxable supply of goods or services or both, which takes place within a State or Union Territory.
- Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services.
- GST is a destination-based tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof.
- GST in India comprises of
  - Central Goods and Services Tax ***(CGST)*** - levied and collected by Central Government,
  - State Goods and Services Tax ***(SGST)*** - levied and collected by State Governments/Union Territories with Legislatures and
  - Union Territory Goods and Services Tax ***(UTGST)*** - levied and collected by Union Territories without Legislatures, on **intra-State supplies** of taxable goods and/or services.
  - Integrated Goods and Services Tax ***(IGST)*** – levied by Centre on all inter-State supplies which is the sum total of CGST and SGST/UTGST.

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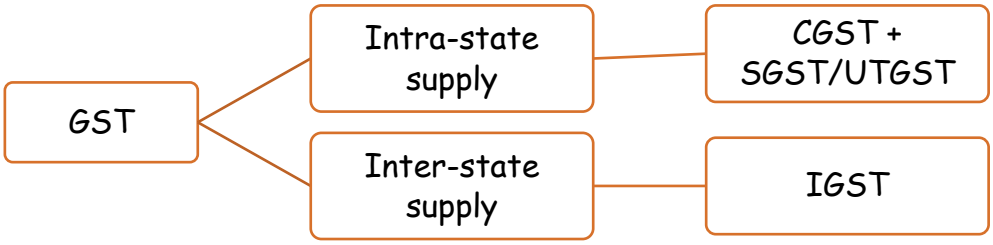

- There is ***single legislation – CGST Act, 2017*** - for levying CGST.
- Similarly, Union Territories without Legislatures are governed by UTGST Act, 2017 for levying UTGST.
- States and Union territories with their own legislatures have their own GST legislation for levying SGST.
- Union Territories **without Legislatures** –

• Andaman and Nicobar Islands	• Lakshadweep

• Dadra and Nagar Haveli	• Daman and Diu
• Chandigarh	• Ladakh

- Union territories **with their own legislatures**

• Delhi	• Puducherry

- Though there are multiple SGST legislations, the basic features of law, such as chargeability, definition of taxable event and taxable person, classification and valuation of goods and services, procedure for collection and levy of tax and the like are uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.

3.2 Constitution (101 Amendment) Act, 2016

- **Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that "no tax shall be levied or collected except by authority of law". The term "authority of law" means that tax proposed to be levied must be withinthe legislative competence of the Legislature imposing the tax.
- **Article 245:** Part XI of the Constitution deals with relationship between the Unionand States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution.
- **Article 246:** It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any partof the territory of India, the State Legislature may make laws for whole or part ofthe State.
- **Seventh Schedule to Article 246:** It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.

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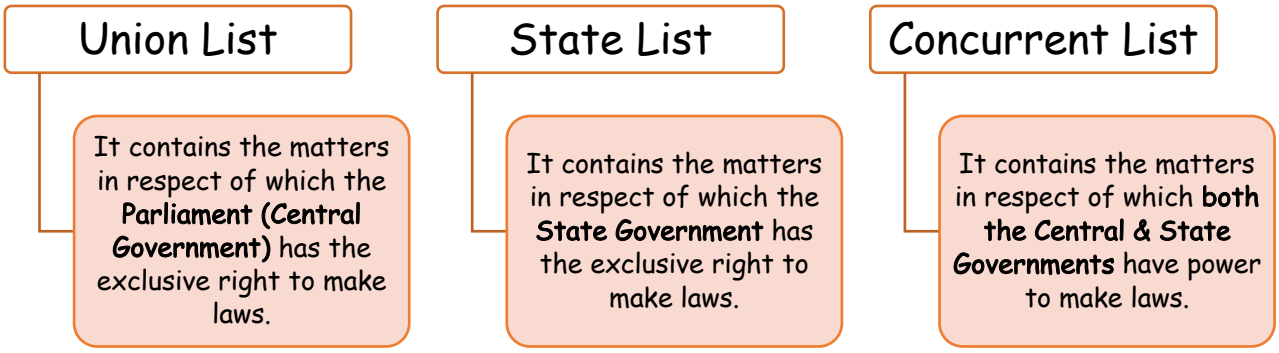

- Entries 82 to 91 of List I enumerate the subjects where the Central Government has power to levy taxes. Entries 45 to 63 of List II enumerate the subjects where the State Governments have the power to levy taxes. Parliament has a further power to make any law for any part of India not comprised in a State even if suchmatter is included in the State List.
  - **Income tax is levied by virtue of Entry 82** - Taxes on income other than agricultural income and

- **Customs Duty vide Entry 83** - Duties of customs including export duties ofthe Union List.
- Power to levy Goods and Services Tax (GST) has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016.

- **Need for Need for Constitutional Amendment –**
  - The Constitutional provisions hitherto had delineated separate powers for the Centre and the States to impose various taxes.
    - Whereas the Centre levied excise duty on all goods produced or manufactured in India
    - The States levied Value Added Tax once the goods entered the stream of trade upon completion of manufacture.
    - In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax), but the tax was collected and retained entirely bythe States.
    - Services were exclusively taxed by the Centre together with applicable cesses, if any.
    - Besides, there were State specific levies like entry tax, Octroi, luxury tax, entertainment tax, lottery and betting tax, local taxes levied by Panchayats etc.
- Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it.
- Consequently, Constitution (101st Amendment Act), 2016 (hereinafter referred to as Constitution Amendment Act) was passed. It has 20 sections.Newly inserted Article 279A empowering President to constitute GST Council.

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3.3 Taxes subsumed by GST

Central Taxes	State Taxes
• Central excise duty & additional excise duties • Service tax • Excise Duty under Medicinal & Toilet Preparation Act • Additional duties of Customs (CVD) • Special additional duties of customs (SAD) • Central Sales Tax • Central Surcharges and cess	• Sales tax / VAT • Luxury tax • Entry Tax & Purchase tax • Entertainment and amusement tax (except those levied by local bodies) • Taxes on advertisements • Tax on lottery, betting and gambling • State Surcharges and cess

3.4 Significant provisions of Constitution (101st Amendment) Act, 2016

- **Article 246A**: This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State.
  - Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.
  - However, in respect to the following goods, the aforesaid provisions shall apply from the date recommended by the GST Council:
    - Petroleum Crude
    - High Speed Diesel
    - Motor spirit (commonly known as Petrol)
    - Natural Gas
    - Aviation Turbine Fuel (ATF)
- Article 269A: This article stipulates that GST on supplies in the course of inter- State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
    - **Import of goods or services** or both into India will also be deemed to be supply of goods and/ or services in the course of Inter-State trade or Commerce. Central Government has power to levy IGST on the import transactions which were earlier subject to Countervailing duty under the Customs Tariff Act, 1975.
    - Where an amount collected as IGST has been used for payment of SGST or vice versa, such amount shall not form part of the Consolidated Fund of India. This is to facilitate transfer of funds between the Centre and the States.
    - Parliament is empowered to formulate the principles regarding place of supply and when supply of goods, or of services, or both occurs in inter- State trade or commerce

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4. GST COUNCIL

- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- President constituted the GST Council on 15th September, 2016.

Chairman	Central Govt. Representative	Union Finance Minister
Member	Central Govt. Representative	Union Minister of State (Revenue / Finance)
Members	State Govt. Representatives (For each state & UT with legislature)	Ministers in charge of Finance/Taxation or Nominated Minister

- Function of the Council – Make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.
- Council recommendations - the special provisions with respect to the Special Category States. There are **11 Special Category States**, namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

- Decision of the GST Council - taken by a majority of not less than three-fourths of the weighted votes of the members present and voting.
    - Vote of the Centre has a weightage of one-third of total votes cast and
    - votes of all the State Governments taken together - has a weightage of two-thirds of the total votes cast, in that meeting.

5. IMPORTANT DEFINITIONS

Goods and Service Tax (GST) – Article 366 (12A) *– means any tax*

- On supply of goods, or services or both
- Except taxes on the supply of the alcoholic liquor for human consumption
    - **Note:** The power to levy tax on alcoholic liquor for human consumption is with the state government.

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Goods - Sec. 2(52) of CGST Act *– means every kind of movable property*

- other than money and securities
- but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Securities - Sec. 2(101) of CGST Act *– Shall have the same meaning as assigned to it in section 2(h) of securities contract (Regulation) Act,1956.*

Securities include - shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of like nature in or of any incorporated company or other body corporate. It also includes derivatives, units of mutual fund or security receipts.

***Money – Sec. 2(75) of CGST Act** – means the Indian legal tender or*

- any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument,
- recognised by the Reserve Bank of India,
- when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination,

***Actionable claim- Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882** – means a claim to any debt,*

- other than a debt secured by
  - mortgage of immovable property or
  - hypothecation or pledge of movable property, or
- to any beneficial interest in movable property not in the possession,either actual or constructive, of the claimant,
- which the civil courts recognise as affording grounds for relief, whethersuch debt or beneficial interest be existent, accruing, conditional or contingent.

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***Services- Sec. 2(102) of CGST Act** – means anything other than goods, money and securities*

- but includes activities relating to the use of money or its conversion by cashor by any other mode, from one form, currency or denomination to anotherform, currency or denomination for which a separate consideration is charged.

6. DEFICIENCIES IN ERSTWHILE ACTS

- **Double taxation of a transaction as both goods and services** as the distinction between goods and services was often blurred, e.g. software was liable to both VAT and service tax.
- CENVAT did not include chain of value addition in the distributive trade below the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods was not removed leading to the **cascading of taxes**. To illustrate, when the goods were manufactured and sold, both central excise duty (CENVAT) and State-Level VAT were levied.
- Though CENVAT and State-Level VAT were essentially value added taxes, set off of one against the credit of another was not possible as CENVAT was a central levy and State-Level VAT was a state levy
- **VAT on goods was not integrated with tax on services**, at the State level, to remove the cascading effect of service tax. With service sector being the fastest growing sector in the

economy, the exclusion of services from the tax base of the States potentially eroded their tax- buoyancy.

- **CST** was another source of distortion in terms of its **cascading nature** since it was non-VATABLE. Being an origin-based tax, CST was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place.
- There were **several taxes in the States**, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT.

7. FEATURES OF GST

- Comprehensive tax structure – GST is a comprehensive tax structure covering both goods and services. This addresses all the above-mentioned deficiencies.
- Value added tax - GST is a value added tax levied on manufacture, sale and consumption of goods and services. In the GST regime, the major indirect taxes have been subsumed in the ambit of GST.
- Continuous chain of tax credits - GST offers comprehensive and continuous chain of tax credits from the producer's point/ service provider's point up to the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
- Tax borne by final consumer - The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages
- No cascading effect of taxes - Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.
- Goods and Services outside GST purview –

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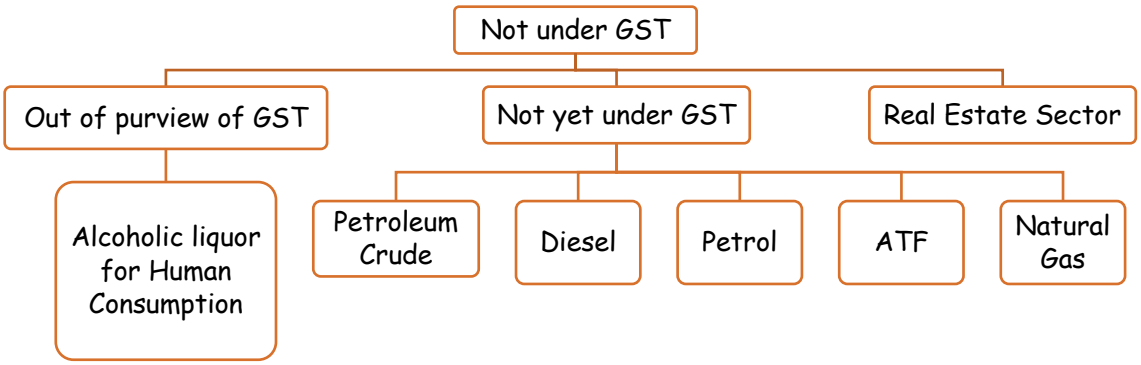
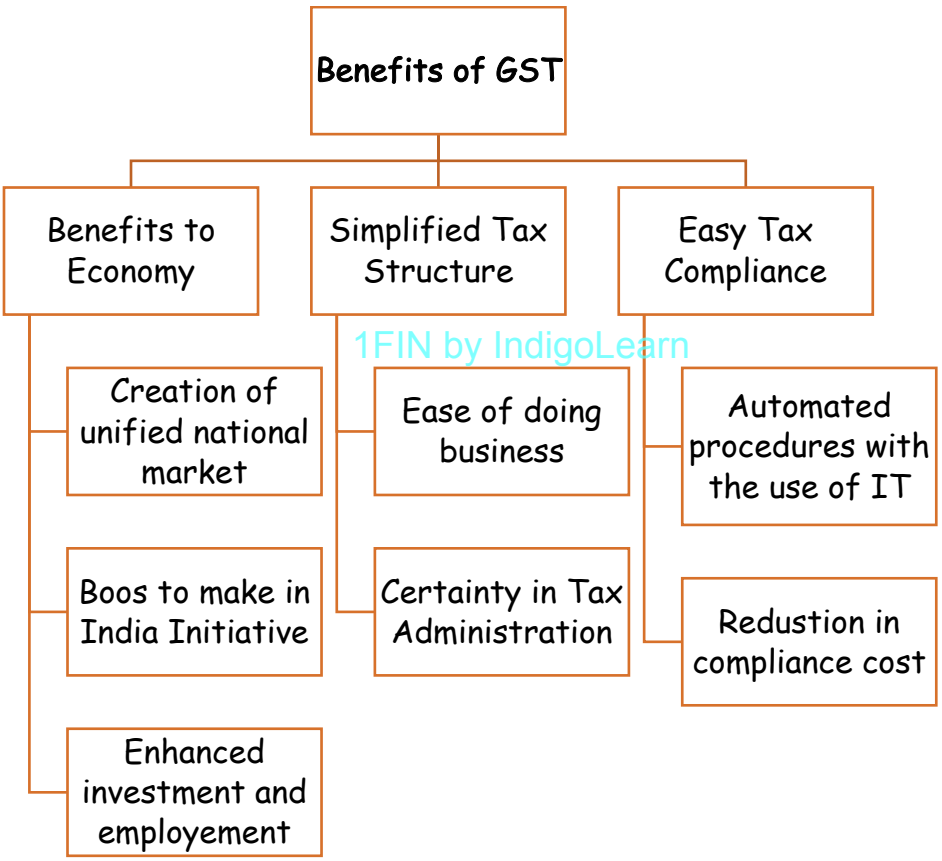


- Alcoholic liquor for human consumption: is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to State excise duty and inter-State/intra-State sale of the same is subject to CST/VAT respectively.
- Petroleum crude, diesel, petrol, ATF and natural gas: As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are

- not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council. Till such date, central excise duty continues to be levied on manufacture/ production of petroleum crude, diesel, petrol, ATF and natural gas and inter- State/intra-State sale of the same is subject to CST/ VAT respectively.
- Tobacco: Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, tobacco is subject to GST as well as central excise duty.
- Real estate sector: Real estate sector has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property.

8. BENEFITS OF GST



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2. SUPPLY UNDER GST

Contents

- Meaning and scope of supply (sec 7)
- Supply with consideration in course/ furtherance of business [Sec 7(1)(a)]
- Import of services for consideration [Sec 7(1)(b)]
- Supply without consideration- Deemed supply [Sec 7(1)(c) - Schedule I]
- Activities treated as Supply of goods or Supply of services [Sec 7(1A) - Schedule II]
- Activities neither the supply of goods nor the supply of services [Sec 7(2)(a) - Schedule III]
- Composite Supplies [sec 8(a)]
- Mixed Supplies [Sec 8(b)]

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1. INTRODUCTION

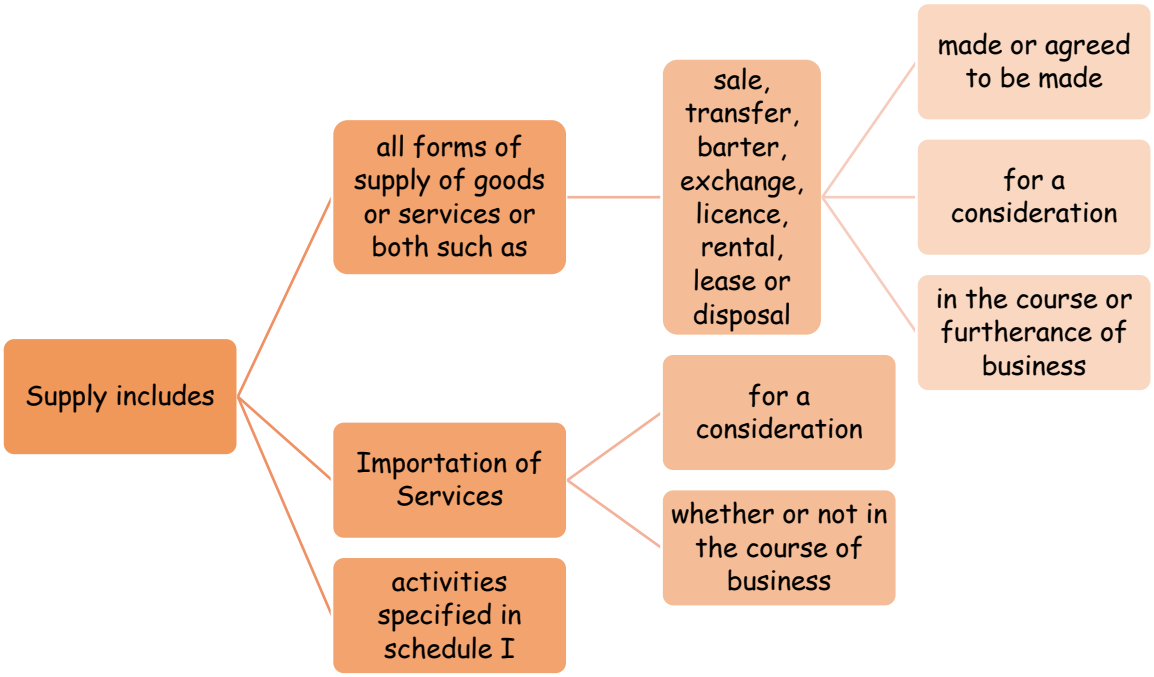
- Before levying any tax, taxable event needs to be ascertained. It determines the point at which tax would be levied.

- The GST laws lays down one comprehensive taxable event i.e. "Supply" - Supply of goods or services or both. Various taxable events namely manufacture, sale, rendering of service, purchase, entry into a territory of State etc. have been done away with in favour of just one event i.e. Supply.

- In the GST regime, the entire value of supply of goods and/or services is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods, or on the provisions of services.

2. MEANING AND SCOPE OF SUPPLY

- The definition of 'supply' as contained in section 7 of the CGST Act is aninclusive definition and does not define the term exhaustively.



- The terms used in the above definition are explained below: -
  - **Sale** - Sale involves transfer of ownership in goods or title to property from one person to another person for consideration.
  - **Transfer** - where the ownership may not be transferred but the right in the goods is transferred.
  - **Barter** - It means, the exchange of goods and productive services for other goods and productive services, without the use of money.
  - **Exchange** - when two persons mutually transfer the ownership of one thing for the ownership of another, along with money being paid as part of consideration, the transaction is called an exchange.
  - **Licence** - where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immovable property of the granter, the right is called a licence.
  - **Rentals** - Periodical payment for use of another's property. Rent is to pay on monthly.
  - **Lease** - A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time. A lease may be financial lease or operating lease.
  - **Disposal**- Disposal normally considered as selling of assets as scrap.
- **In the course of business** - Whatever activities a person carries out regularly for running business, trade or commerce are called as in the course of business.
- **Furtherance of business** - Such new activities which are undertaken to develop or expand the business are called as furtherance of business.

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- Anything supplied other than goods and services is outside the scope of supply.

> ***Consideration [Sec 2(31)]*** *– In relation to the supply of goods or services or both includes—*
>
> (a) Any payment made or to be made, whether in money or otherwise,
>
> (b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, —
>
> - Whether by the recipient or by any other person
> - But shall not include any subsidy given by the Central Government or a State Government.
> - However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply

- From the above definition, the following are importation:
  - **Consideration** not only includes money but covers anything which might be possibly done, **given or made in exchange for something else.**
  - Consideration need not always flow from the recipient of the supply. It can also be **made by a third person.**
  - An important feature of consideration is **quid pro quo (something for something).** Donations received by charitable organisations are treatedas considerations only if there exists an obligation on the part of the recipient of the donation or gift to do anything in return for the donor.
  - GST is not leviable on gifts/ donations
    - if it is made to a charitable organisation
    - if it is payment has the character of the gift / donation and
    - if the purpose is philanthropic (i.e. no commercial gain) and not in the nature of advertisement.
  - When the name of the donor is displayed in the recipient's premises as an expression of gratitude and is not aimed at giving publicity to the donor in such a manner that it amounts to advertising of his business, then there isno supply of service for consideration. [Circular No. 116/35/2019 GST dated 11.10.2019]
  - Art works sent by artists to galleries as exhibition - Not a Supply as no consideration flows from the galleries to the artist.
    [Circular No. 22/22/2017 GST dated 21.12.2017]
  - No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him - there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.
    [Circular No. 186/18/2022 GST dated 27.12.2022]
  - Any subsidy given by the Central Government or a State Government is NOT

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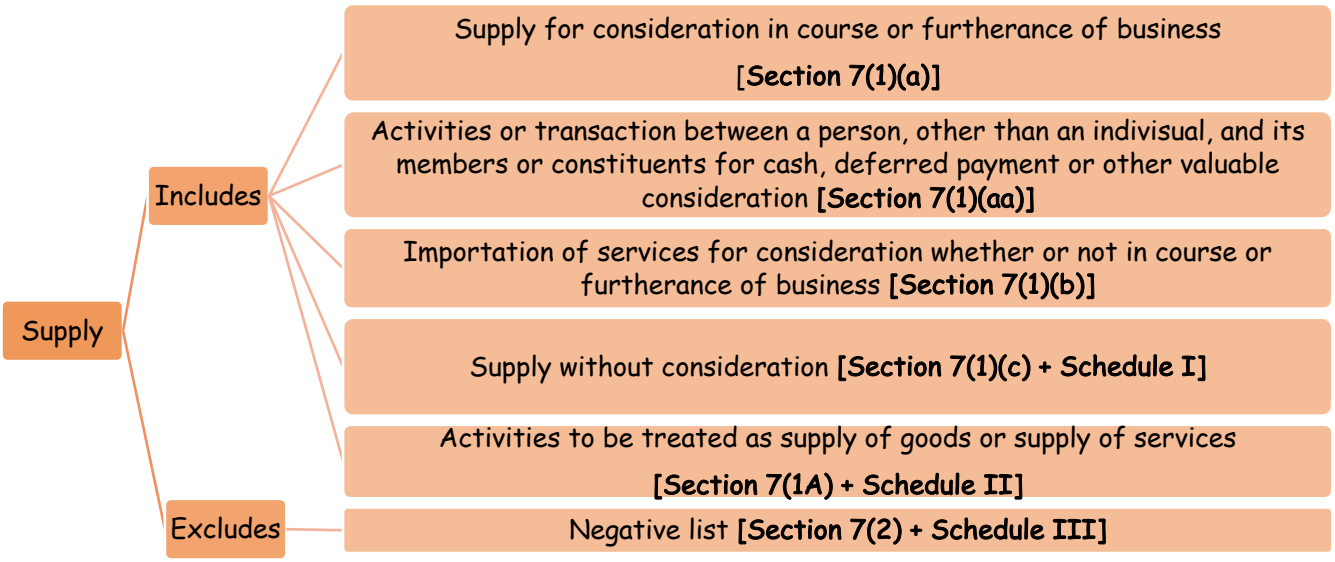
considered.

- A deposit shall not be considered as payment made for such supply unless the supplier applies / appropriates such deposit as consideration for the said supply.
- Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under Schedule I of the CGST Act.



3. IMPORTATION OF SERVICE FOR A CONSIDERATION WHETHER OR NOT IN COURSE OR FURTHERANCE OF BUSINESS – [SECTION 7(1)(B)]

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1. It is applicable only for services and not for goods
2. It should be import of service, where
   i. The supplier of service is located outside India;
   ii. The recipient of service is located in India; and
   iii. The place of supply of service is in India.
3. Services shall be provided with consideration
4. Services may be in the course or furtherance of business or not in the course or furtherance of business.

4. SUPPLY WITHOUT CONSIDERATION - DEEMED SUPPLY [SECTION 7(1)(C)] READ WITH SCHEDULE I

- There are instances where an activity or transaction is treated as supply, ***even if the same is made without consideration.***
- These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed below:

4.1 - Permanent Transfer/Disposal of Business Assets where input tax credit has been availed on such assets.

- In order to qualify as supply under this para, following conditions need to be satisfied:
  - There must be a disposal or transfer of business assets
  - Transfer/disposal must be permanent
  - ITC must have been availed on such business assets.
- However permanent transfer/disposal of following business assets, without consideration, will not be deemed as supply:
  - Business assets on which ITC is blocked/not available under GST
  - Business assets though eligible for ITC, ITC has not been availed by the registered person.
- It is important to note that the term business assets have not been defined under the GST law.
- This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

4.2 – Supply between Related Person or Distinct Person

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- Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply ***provided it is made in the course or furtherance of business.***

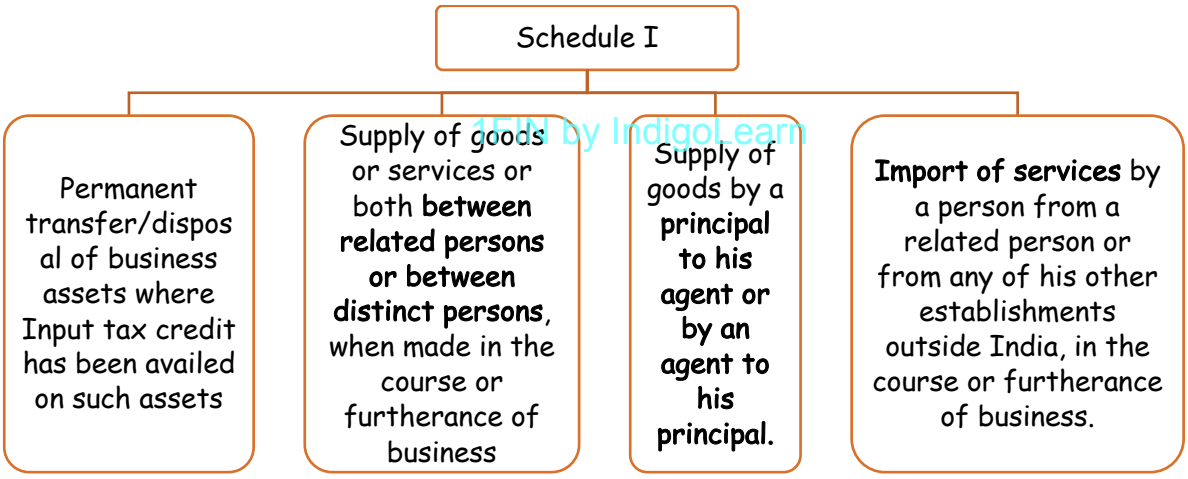
4.2.1 – Distinct Persons

- Under GST law, a supplier is required to obtain **State-wise registration**.
- He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit.
- Further, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.

Distinct persons - A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons. [section 25(4)]

Establishments of Distinct persons - where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then suchestablishments shall be treated as establishments of distinct persons. [sec 25(5)]

- Transactions between different locations (with separate GST registrations) of same legal entity (e.g., ***stock transfers or branch transfers) will qualify as 'supply'*** under GST as these are transactions between distinct persons.
- However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. For e.g.: supply of goods from factory (In Lucknow) to retail showroom (In Kanpur) in same State (Uttar Pradesh) under single registration does not constitute supply.



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4.2.2 – Related Persons

As per Explanation to Section 15,

a) persons shall be deemed to be "related persons" if--
   i. such persons are **officers or directors** of one another's businesses;
   ii. such persons are legally recognized **partners** in business;
   iii. such persons are **employer and employee**;
   iv. any person directly or indirectly owns, **controls or holds 25% or more** of the outstanding voting stock or shares of both of them;
   v. one of them **directly or indirectly controls the other**;
   vi. both of them are **directly or indirectly controlled by a third person**;
   vii. together they **directly or indirectly control a third person**; or
   viii. they are **members of the same family**;

b) the term "person" also includes **legal persons**;

c) persons who are **associated in the business** of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

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- Difference between Agent and Distributor

Agent	Distributor
Procures from the company and supplies to customers on behalf of the company for ***commission***	Purchases from the company and sells to customers in his own capacity for ***profits***

Family [Section 2(49)] – means,

- The spouse and children of the person, and
- The parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

Person [Section 2(84)] – includes,

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

4.2.3 – Supply of goods or services or both between an employer and employee:

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- Services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply [Schedule III of CGST Act]
- If services such as membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same will not be subjected to GST.
- The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (CTC)
- *Gifts up to Rs. 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.*
- The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be enforced in a court of law.

4.3 Principal – Agent

- Supply of goods—
    - by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

- by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal

is considered as supply.

- ***Only supply of goods and not supply of services*** is covered here. the supply of services between the principal and the agent and vice versa would therefore require "consideration" to be considered as supply.
- The key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Thus, the indicator is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.
- Where the ***invoice for further supply is being issued by the agent in his name*** then, any provision of goods from the principal to the agent would fall within the fold of this para. I.e., It would be ***considered as supply***.
  The disclosure or non- disclosure of the name of the principal is immaterial in such situations.
- In cases where the ***invoice is issued*** by the agent to the customer ***in the name of the principal***, such agent shall ***not fall within the ambit of Schedule-I*** of the CGST Act, 2017.
- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by this para.

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4.3.1 – Examples for the above provisions:

1. Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Anmol, and asks the supplier, Mr. C to send the goods and issue the invoice directly to Mr. A.

In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Para 3. of Schedule I.

2. M/s Tintin, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s Tintin. The invoice for the supply of the goods is issued by M/s Tintin to the successful bidder.

In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mandaar is not an agent of M/s Tintin for the supply of goods in terms of Para 3. of Schedule I.

3. Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder.

The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder. In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3. of Schedule I.

4.3.2 – Del-Credere Agent (DCA)

- A DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. DCA guarantees the payment to the supplier. where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer.
- The commission paid to the DCA is relatively higher than that paid to a normal agent as he is effectively providing an insurance against default by the buyer.
- In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

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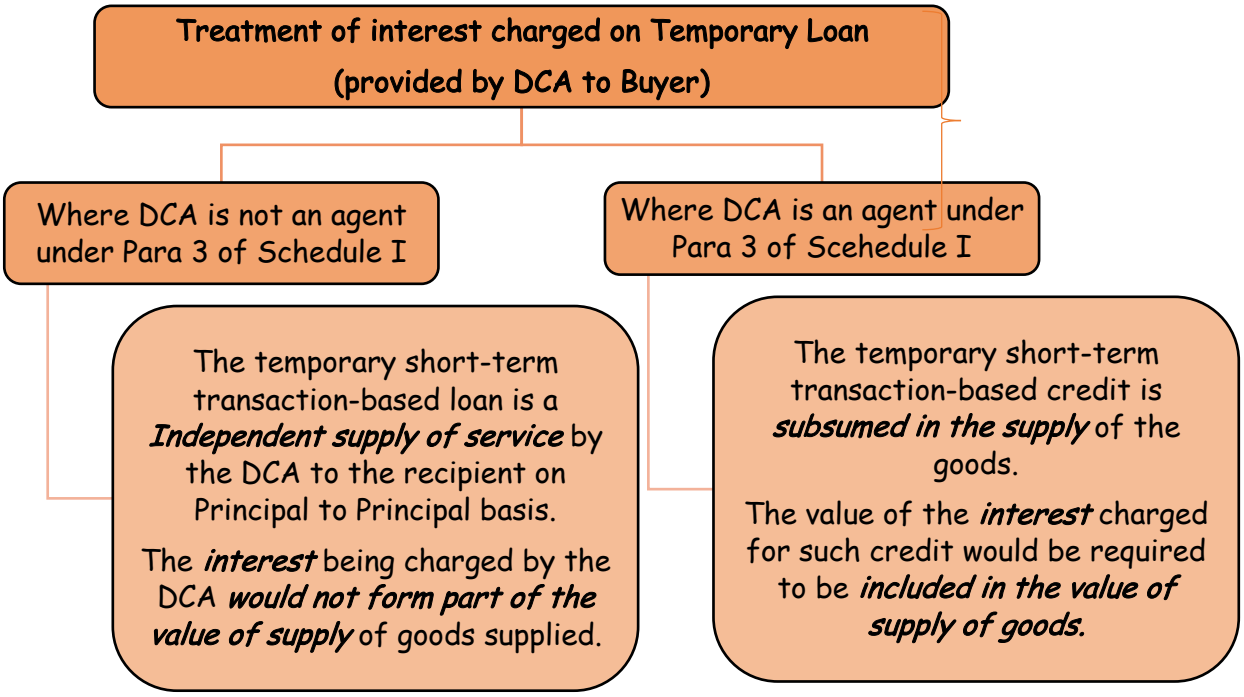
Whether DCA falls under the ambit of agent under para 3 of schedule I of the CGST Act?

If invoice is issued by the supplier to the customer, either himself or through DCA, the DCA **does not fall** under the ambit of agent.

If invoice is issued by the DCA in his own name, the DCA **would fall** under the ambit of agent.

4.3.3 – Clarifications with Del-credere Agent (DCA)



4.4 – Importation of Services

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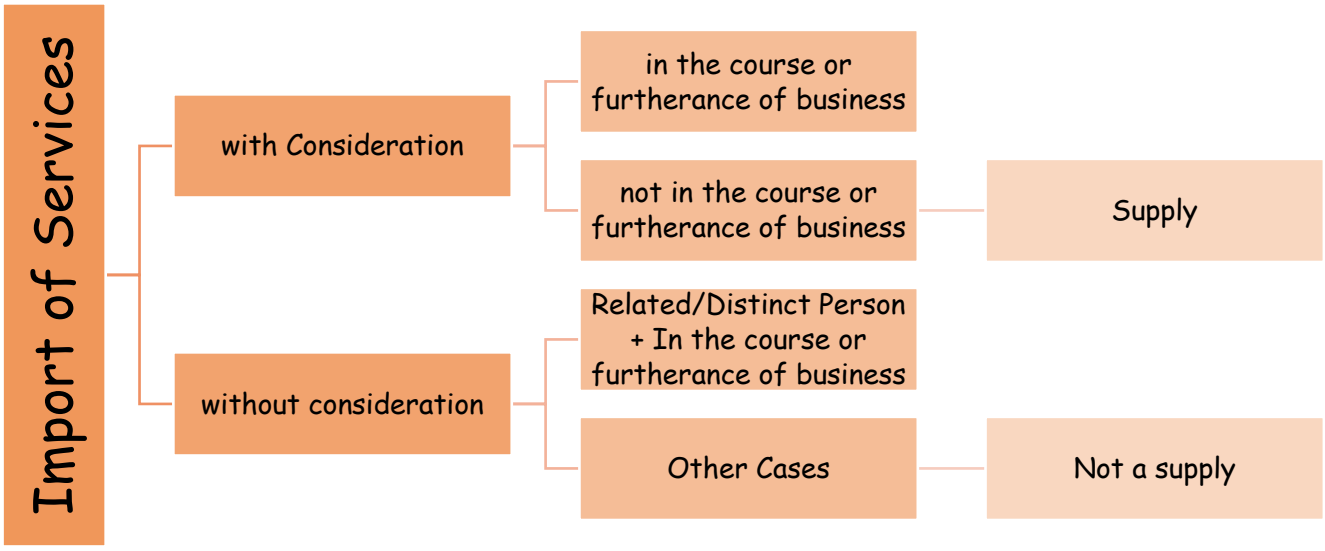
- Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply".



5. ACTIVITIES/TRANSACTIONS BETWEEN A PERSON OTHER THAN AN INDIVIDUAL AND ITS MEMBERS/CONSTITUENTS FOR CONSIDERATION [SECTION 7(1)(AA)]

- The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash,

deferred payment or other valuable consideration are covered within the ambit of 'supply' as per section 7(1) (aa).

- Further, explanation to clause (aa) to section 7(1) clarifies that for the purpose of this clause, such person (association, club, etc.) and its members or constituents shall be **deemed to be two separate persons** and the supply of activities or transactions between them shall be deemed to take place from one such person to another.
- The explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority.
- The aforesaid explanation prevents the application of doctrine of mutuality by such person or persons.
- For example:
    - Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.
    - A Resident Welfare Association collects maintenance charges from its members for services provided.
    - Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.

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6. ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES [SECTION 7(1A) + SCHEDULE II]

- Section 7(1A) (read with Schedule II) of the CGST Act classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services.
- This helps in mitigating the ambiguities which existed in earlier laws.
- This also helps in identifying the correct tax rate as there are different rates for different goods and different services.

Schedule II		
Sr. No.	**Transactions**	**Supply**
1	**Transfer**	
	(a) Transfer of the title in goods.	Supply of goods
	(b) Transfer of right in goods or undivided share in goods without the transfer of title.	Supply of service

	(c) Transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. (Examples – i) Installment, ii) Hire purchase sale and iii) Goods sent on approval	Supply of goods
2	**Land and Building**	
	(a) Lease, tenancy, easement, license to occupy land	Supply of service
	(b) Lease or letting of any building including for business or commerce. (Building might be a commercial, industrial or residential complex rent out wholly or partly)	Supply of service
3	**Treatment or process**	
	Any treatment or process which is applied to another person's goods (example – Catering, job work etc.)	Supply of service
4	**Transfer of business assets**	
	(a) Goods forming part of business are transferred or disposed off by the owner	Supply of goods
	(b) The owner (person carrying on business) uses or allows to use business assets for personal use.	Supply of service
	(c) If the owner ceases to be a taxable person then business assets will be assumed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. This is not applicable when:- (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person.	Supply of goods
5	(a) **Renting** of immovable property. (b) Construction of complex, building, civil structure, etc. where consideration is received before issue of completion certificate* (c) Temporary transfer or permitting use or enjoyment of any intellectual property right (d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software (e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act. Note: Activity of Transfer of tenancy right against consideration (i.e. tenancy premium) is squarely covered under supply of service liable to GST. Transfer of tenancy rights cannot be treated as sale of land / building given in Schedule 5.	Supply of service
6	**Composite supply** **(a) Works contract services**	

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	Works contract: means a contract for building construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.	Supply of service
	(b) Supply by way of or as part of any other service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption).	Supply of service

Note: Construction of a complex, building, civil structure or a part thereof, including a complex or building ***intended for sale*** were,

(a) Full / part of consideration received, before issue of completion certificate by competent authority – Subject to GST. GST is chargeable on the entireconsideration amount.

(b) Full consideration is received after issue of completion certificate by competent authority or after its first occupation, whichever is earlier – Not Subject to GST.

- The term construction includes additions, alterations, replacements, or remodelling of any existing civil structure.
- ***competent authority*** means the ***Government or any authority authorised*** to issue completion certificate under any law for the time being in force and in caseof non-requirement of such certificate from such authority from any of the following, namely: —
  - an architect
  - a chartered engineer
  - a licensed surveyor of the respective local body of the city

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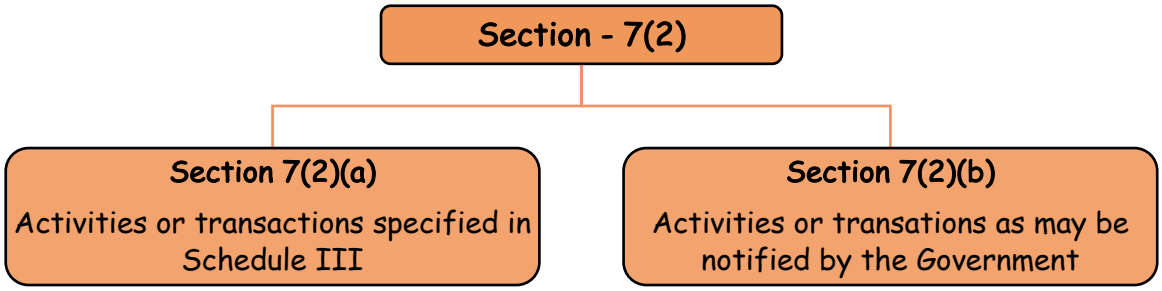
6. NEGATIVE LIST UNDER GST [SECTION 7(2) + SCHEDULE III]

6.1 - Negative List

- Activities/transactions specified under Schedule III are termed "Negative list" under the GST regime. This schedule specifies transactions/ activities which shall be neither treated as supply of goods nor a supply of services.



Schedule III

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

- Amounts received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment.
- Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment.
- Services provided outside the ambit of employment for a consideration would qualify as supply.
- Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.
- Gifts up to Rs.50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. However, gifts of value more than Rs. 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.
- Employer shall be liable to pay GST on such gifts.

2. Services by **any Court or Tribunal** established under any law for the time being in force.

- The term "Court" includes District Court, High Court and Supreme Court.

3. Functions performed by **Members of Parliament, Members of state legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.**

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- Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity like President, Vice President, Prime Minister, Chief Justice, Speaker of the Lok Sabha etc.
- Duties performed by any person as a chairperson or a member or a director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee.

4. Services of **funeral, burial, crematorium or mortuary** including transportation of the deceased.

5. **Sale of land** and, subject to paragraph 5(b) of Schedule II (construction service), sale of building.

Sale of building - if consideration is paid after receipt of completion certificate – No GST.

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

Only lottery, betting and gambling are treated as supply. All other actionable claims are outside the ambit of definition of supply.

CGST Amendment Act, 2023 has amended the above entry and changed the same to **"Actionable claims, other than specified actionable claims". Specified actionable claims covers betting, gambling, lottery, casinos, horse racing and online money gaming.**

Above amendment has been made to cover casinos, horse racing and online gaming under GST net.

7. **Out and Out Supplies:** Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. It seeks to exclude

	from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non- taxable territory.
8.	Supply of warehoused goods to any person before clearance for home consumption. Warehoused goods means goods deposited in a warehouse. (Including goods warehoused in a SEZ (or) Free Trade Warehousing Zone) before Home consumption or Export.
9.	Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption

New Points added:

Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

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Examples:

1. Mr. A purchased goods from China and sold it to Mr. John in Canada without bringing the goods in India. This transaction is neither supply of goods nor supply of services.
2. Mr. X imported some goods in India, but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Mr. X sold these goods to Mr. Y while they were in warehouse. This transaction between Mr. X and Mr. Y is neither supply of goods nor supply of services.
3. Mr. P of India imported some goods from Japan. While the goods were in high seas, Mr. P sold the goods to Mr. Q in India by way of endorsement of documents of title of goods. This transaction between Mr. P and Mr. Q is neither supply of goods nor supply of services.

6.2 – Section 7(2)(b) – Activities/Transactions (Non-Supplies) notified by the Government

- Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/transactions which shall be treated neither as a supply of goods nor a supply of services.

- In this regard, the Government has notified the services by way of any activity in relation to a function entrusted
    - to a ***Panchayat*** under article 243G of the Constitution or
    - to a ***Municipality*** under article 243W of the Constitution.

6.3 – CBIC Clarifications

- CBIC has clarified that following activities/transactions are neither supply of goods nor supply of services.

1. ***Inter-State movement of various modes of conveyance***,
    - Inter-State movement of various modes of conveyance,
    - ***between distinct persons*** including – Trains, Buses, Tankers, Trucks, Trailers, Vessels, Containers, Aircrafts,
    - carrying goods or passengers or both or
    - for repairs and maintenance
    - such inter-State movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to GST.
    - GST is applicable on the value of the goods being carried in that conveyance.
    - If conveyance is being sent for further supply (selling / leasing etc) then GST is leviable on such supply.
    - Applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

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2. ***Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]***
    - Inter-State movement of rigs, tools and spares, and all goods on wheels [likecranes]
    - between distinct persons
    - for repairs and maintenance
    - such inter-State movement shall be treated 'neither as a supply of goods orsupply of service' and therefore not be leviable to GST.
    - If such movement is for further supply (selling / leasing etc) then GST isleviable on such supply.
    - Applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairsand maintenance done on such goods.
3. ***Grant of license for alcoholic liquor***
    - Services by state government by way of granting license for alcoholic liquor for human consumption, shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to GST.
    - Alcoholic liquor for human consumption is kept outside the purview of GST. And thus even granting license for a consideration of license fee is outside GST.

- State government license for any other goods or service will attract GST.

7. SUPPLY – ADDITIONAL CONDITIONS

- **Supply by taxable person** – the person supplying should be a taxable person,the recipient need not be a taxable person. A taxable person is a person who isregistered or liable to be registered under section 22 or section 24. A person going for voluntary registration can also be taxable person.
- **Supply should be taxable** – Supply of goods or services or both which, is leviable to tax under the GST Act.

8. POWERS OF CENTRAL GOVERNMENT

As per Section 7(3) of the CGST Act, 2017 Subject to the provisions of sub- sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- a supply of goods and not as a supply of services; or
- a supply of services and not as a supply of goods

9. COMPOSITE SUPPLY AND MIXED SUPPLY

9.1 – Composite Supply

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Composite Supply [Section 2(30)] – means a supply made by a taxable person to a recipient and

- Comprises two or more taxable supplies of goods or services or both, or any combination thereof
- are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply.

Principal Supply [Section 2(90)] – means a supply of goods or services, -

- Which constitutes the predominant element of a composite supply and
- To which any other supply forming part of that composite supply is ancillary.

- A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.
- Thus will be taxed at the rate applicable for principal supply.
- Whether the services are bundled in the ordinary course of business, would depend upon the normal or frequent practices followed in the area of business to which services relate.
- Some indicators of such practices are:

- If large number of service recipient of such bundle of services reasonably expect such services to be provided as a package. (E.g., Supply of foods during long flight journey.)
- Majority of service providers in a particular area of business provide similar bundle of services. (E.g.: Watching a movie on overnight bus journey)
- If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. (e.g., service of stay in a hotel is often combined with provision of breakfast)
- The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.

9.2 – Mixed Supply

Mixed Supply [Section 2(74)] *– means -*

- *Two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person.*
- *for a single price*
- *where such supply does not constitute a composite supply.*

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- The individual supplies are independent of each other and are not naturally bundled.
- A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that **attracts highest rate of tax.**

Composite Supply – Section 8 (a)	***Mixed Supply – Section 8 (b)***
• Consists of two or more supplies • Naturally bundles • in conjunction with each other • one of which is principal supply • Tax liability shall be the rate is principal supply • Example: Charger supplied along with mobile phones.	• Consists of two or more supplies for single price • Artificially bundled • Though can be supplied independently, still supplied together • Tax liability shall be the rate applicable to the supply that attracts highest rate of tax • Example: A Gift pack of chocolates, candies and balloons.

10. SPECIAL CASES (CLARIFICATIONS THROUGH CIRCULARS/NOTIFICATIONS)

- **Sending artwork to galleries for exhibition** - If any artist sends his art work to galleries for exhibition, this interstate movement of art work will ***not be considered as supply*** as there is no consideration flowing from the galleries or Organisers of exhibition to the artist. Consideration will be paid only in case the artwork is sold to any interested buyer.

- **Retreading of tyres** - pre-dominant element is process of retreading which is a ***supply of service***. Rubber used for retreading is an ancillary supply.

However, Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a ***supply of goods***.

- **Printing on letter heads, etc.** - In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute ***supply of goods.***

- **Printing of pamphlets, brochures etc.** - In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute ***supply of service.***

- **Servicing of cars** - In case of servicing of cars involving supply of both goods (spare parts) and services (labor) where the value of goods and services are shown separately, CBIC has clarified that the goods and services would be liable to ***tax at the rates as applicable to such goods and services separately.***

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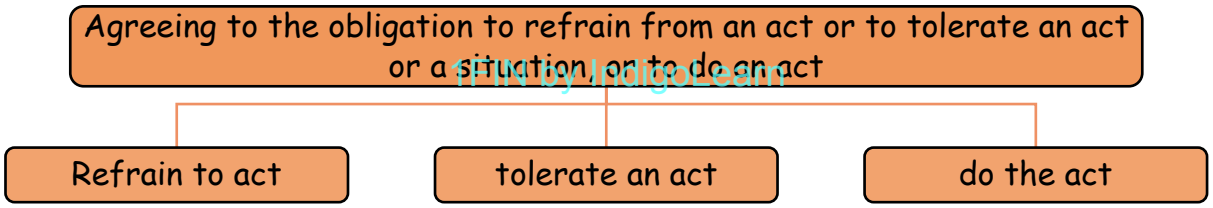
- **Gift/donation for charitable purpose –** where any gift or donation is paid to any charitable institution for charitable/philanthropic purpose, such payment is not subject to GST. If there is any commercial gain, to the payer and there is an obligation on the recipient to display the payer's name then it will fall under advertising services.

- **Free samples and gifts:** Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

- **Buy one get one free offer:** It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly.

- **Supply of food and beverages at cinema halls shall be taxable as restaurant service –** Further, it has been clarified that if sale of ticket and supply of food and beverages are clubbed together and such bundled supply satisfies the test of composite supply, then entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

- **Activity of holding of shares of subsidiary company by the holding company per se cannot be treated as supply of services and cannot be taxed under GST**
- **Taxability of 'tenancy rights' under GST** - Pagadi system, i.e., transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property.
- The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement.
- ***It has been clarified that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.***
- **Applicability on Liquidated Damages, Compensation and penalty arising out of breach of contract or other provisions of law** – Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II if the same constitutes a "supply" within the meaning of the CGST Act.



  - The three of the above expressions namely Refraining, Tolerating and Doing an act must comply the following conditions
    - There must be an expressed or implied agreement or a contract (independent contract/agreement) must exist
    - Consideration must flow in return to this contract/agreement
  - Taxability of some of the transactions are as below

- Liquidated Damages – not a supply as the contracts are entered for its performance but not its breach, liquidated damages are just mere flow or money as they do not restitute the aggrieved party and such damages does not qualify as the mere consideration for having permitted or tolerated the deviation or non-fulfillment of the promise by the other party.
- In such cases, determine if the questioned payments are consideration for an independent contract involving tolerating, refraining from, or performing an act. If yes, it qualifies as a 'supply,' regardless of its designation; otherwise, it is not considered a "supply."
- Fines and penalties – is a supply as they are charged to facilitate the acceptance of late payment, it qualifies as consideration for supply, and are subject to GST.

- Note: Penal charges levied by Regulated Entities (REs), in compliance with RBI directions dated 18.08.2023, are essentially in the nature of charges for breach of terms of contract and hence, it has been clarified that no GST is payable on the penal charges levied by Regulated Entities for non-compliance with material terms and conditions of loan contract by the borrower.

- Cheque Dishonor fine/Penalty – not a supply as they are imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation which disqualifies such payments as consideration for any service and not taxable
- Penalty imposed for violation of laws – not a supply as laws are not framed for tolerating, penalizing and thereby deterring and discouraging such an act or situation. However, there is no such agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty, as there cannot be such an agreement of violation of law is never a lawful object for consideration for any service and are not leviable to Tax.
- Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period – not a supply as the said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.
- Late payment surcharge or fee – is a supply as the said payments are paid for provision of facility of accepting the late payments with interest or late payment fee granted by the supplier is naturally bundled with the main supply. It is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply, it should be assessed at the same rate as the principal Supply
- Fixed Charges for Power – is exempt as the said minimum fixed charges paid for an electricity connection will be the same as per contract entered at the time of obtaining the connection from SEB or DISCOMs but all the components paid for the supply of electricity are not taxable as electricity is exempt from GST.
- Cancellation Charges – is a Supply as the said charges are collected by the service provider can be considered as the charges of the costs involved in making arrangements for the intended supply and the costs in volved in the cancellation of such supply, these charges are for the facilitation of the arrangements that were incurred from the inception of contract of supply till the event of cancellation. These cancellation charges are naturally bundled with the principal supply and is taxable with the rate at which the principal supply is charged.
- The loan between related parties, such as an Indian affiliate receiving a loan from an overseas affiliate, where the consideration is only in the form of interest or discount, will not be treated as a deemed supply of service under Section 7(1)(c) of the CGST Act, even though this section generally covers transactions between related parties. ✓ However, if any fees such as processing fees, administrative charges, or service fees are charged in addition to interest or discount, these fees will be treated as the consideration for a supply of service, which will attract GST and the value determined in terms of Rule 28 of CGST Rules, 2017 and in such case, GST is payable under RCM, being import of services

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- GST Liability on Salvage Value: This issue is addressed by way of circular

  When Salvage Remains with the Insured:

  - Situation: In some cases, according to the contract terms, the insurance company deducts the salvage value from the final claim amount This means that the salvage or wreckage remains the property of the insured person (the vehicle owner), and the insurance company simply reduces the payout by the salvage value.
  - GST Implication: In this scenario, since the insurance company does not take ownership of the salvage, it is not considered a supply made by the insurance company. Therefore, the insurance company is not liable to discharge GST on the salvage value. The ownership and responsibility of the salvage remain with the insured.

  When Salvage Becomes Property of the Insurance Company:

  - Situation: In other cases, the insurance company settles the full claim amount without deducting the salvage value, meaning the salvage or wreckage becomes the property of the insurance company. The insurance company may then sell the salvage to a salvage buyer.
  - GST Implication: When the insurance company takes ownership of the salvage and subsequently sells it, this transaction is considered a supply under GST law. Therefore, the insurance company must discharge GST on the sale of the salvage, as it is now a taxable supply made by the insurance company to the salvage buyer.

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ILLUSTRATIONS

Illustration 1

Examine whether the following activities would amount to supply under section 7 of theCGST Act:

a. Damodar Charitable Trust, a trust who gets the eye treatment of needy people done free of cost, donates clothes and toys to children living in slum area.

b. Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold.

c. Raman is an Electronic Commerce Operator in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regards to his family dispute.

Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?

Illustration 2

Determine whether the following supplies amount to composite supplies:

a. A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided along with the room accommodation

b. A toothpaste company has offered the scheme of free toothbrush the toothpaste.

Illustration 3

Whether goods supplied on hire purchase basis will be treated as supply of goods or supply of services?

Illustration 4

Athiratha is a salaried employee and is planning to invest in stocks. He has opened a trading account with Sopana Brokers. During the month, Athiratha undertook future contracts (without a physical delivery option, but are cash settled on the expiry of the contract date), amounting to Rs. 35,00,000. Athiratha needs your advice whether such future contracts undertaken by him amount to supply and are liable to GST.

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Illustration 5

a. Rudraksh Kapoor, owner of Rudraksh Publishing House, Ghaziabad, U.P., donated some money to a Divyaprakash Charitable Trust in the memory of his late father. The Divyaprakash Charitable Trust constructed a room in the school run by it from such donation and wrote "Donated by Rudraksh Kapoor in the memory of his father" on the door of the room so constructed. Examine whether the money donated by Rudraksh Kapoor is leviable to GST.

b. In the above question, if the Divyaprakash Charitable Trust had written on the door of the room constructed in the school run by it from the money donated by Rudraksh Kapoor "Donated by Rudraksh Publishing House, Ghaziabad, U.P.", would the given transaction/activity qualify as supply.

Illustration 6

a. Sudama Associates, a registered supplier, disposes the computers owned by the business without consideration and it has not claimed input tax credit on such computers.

   Examine whether the disposal of computers by Sudama Associates qualifies as deemed supply under Schedule I of the CGST Act.

b. Prithvi Enterprises appoints Champak to procure certain goods from. the market. Champak identifies various suppliers who can provide the goods as desired by Prithvi Enterprises, and asks a supplier - Satya Manufacturers to send the goods and issue invoice directly to Prithvi Enterprises.

You are required to determine whether Champak can he considered as an agent of Prithvi Enterprises in terms of Schedule I of the CGST Act.

Illustration 7

Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures taxable products. The firm also provides taxable consultancy services.

Mr. Rajesh Surana has provided the consultancy service to his brother - Mr. Akhilesh Surana (located in USA) without any consideration. The products manufactured by Mr. Akhilesh are similar to the ones manufactured by Mr. Rajesh Surana. Mr. Surana charges Rs. 3,00,000 for providing similar consultancy services to other independent customers located in USA.

Compute the GST liability, if any, in the given case assuming the rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.

Illustration 8

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Shivaji Pvt. Ltd., a registered supplier, supplies the Following goods and services for construction of buildings and complexes -

- excavators for required period at a per hour rate
- manpower for operation of the excavators at a per day rate
- soil testing and seismic evaluation at a per sample rate

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out.

For a given month, the receipts (exclusive of GST) of Shivaji Pvt. Ltd. are as follows:

- Hire charges for excavators- Rs 18,00,000
- Service charges for supply of manpower for operation of the excavator - Rs 20,000
- Service charges for soil testing and seismic evaluation at three sites - Rs 2,50,000

Compute the GST payable by Shivaji Pvt. Ltd. for the given month.

Assume the rates of GST to be as under: Hiring out of excavators- 12% Supply of manpower services and soil- testing and seismic evaluation services - 18%.

Illustration 9

Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the Following supplies in the month of January:

(i) Supply of a laptop along with the laptop bag to a customer of Mumbai for Rs 55,000 (exclusive of GST).

(ii) Supply of 10,000 kits (at Rs 50 each) amounting to Rs 5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil,1 beauty soap and 1 hair comb.

(iii) 100 kits are given as Free gift to Jaipur customers (all unrelated) on the occasion of Mrs. Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is Rs 35. Input tax credit has not been taken on the goods contained in the kit.

(iv) Event management services provided Free of cost to her brother (wholly dependent on her) For his son's marriage Function in Indore {Madhya Pradesh). Cost of providing said services is Rs 80,000.

(v) ,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) For

(vi) Rs 3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers From Mrs. Kajal's godown at Jaipur to Function Garden, Ajmer. Since Mrs. Kajal is not a GTA, transportation services provided by her are exempt vide Notification No.12/2017 CT (R) dated 28.06.2017.

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Assume rate of GST as under: -

Sr. No.	Particular	Rate of GST (%)
1	Laptop	18
2	Laptop Bag	28
3	Hair Oil	18
4	Beauty Soap	28
5	Hair Comb	12
6	Event Management Service	5
7	Service of renting of chairs and coolers	12
8	Transportation service	5

From the above information, examine each of the above supplies made by Mrs. Kajal for the month of January and determine the rate of GST applicable on the same.

zIllustration 10

ABC Consultancy, registered In Mumbai, supplies technical consultancy services to Its clients. It has been providing technical services to XY Ltd., Mumbai since past two years. Consideration Is settled by XY Ltd. assignment wise. XY Ltd. paid Rs. 45 lakhs to ABC Consultancy on 10th January, 2021 on ABC consultancy agreeing to not provide similar technical services to any other business entity In

India or abroad for a period of 8 years. ABC Consultancy is of the view that Rs. 45 lakhs is not chargeable to GST.

You are required to examine whether the view taken by ABC Consultancy is valid in law.

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3. CHARGE OF GST

Contents

- Levy and Collection of GST [Sec 9]
- Reverse Charge Mechanism [Sec 9(3) & (4)]
- Tax payable by ECO [Sec 9(5)]
- Composition Levy [Sec 10]
- Tax at Concessional Rate [Notification no. 2/2019]

1. INTRODUCTION

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- To pave way for the introduction of Goods and Services Tax ("GST"), 101st Constitutional Amendment Act was passed.
- The very basis for the charge of tax in any taxing statute is the taxable event i.e. the occurrence of the event which triggers levy of tax. The taxable event under GST is Supply.
- CGST and SGST/UTGST are levied on all intra-State supplies of goods and/or services while IGST is levied on all inter- State supplies of goods and/ or services.

2. LEVY AND COLLECTION OF GST -SECTION 9

- The provisions relating to levy and collection of CGST and IGST are contained in section 9 of the CGST Act, 2017 and section 5 of the IGST Act, 2017, respectively.

Taxable Supply [Sec 2(108)] *- means a supply of goods and/or services which is/are chargeable to tax under GST*

Section 9 - Levy and Sollection of CGST

Sec 9 (1) - CGST shall be levied on all intra-state supplies of goods ir services or both, except on the supply of alcoholic liquor for human consumption

Sec 9 (2) - Tax on supply of 5 Petroleum products shall be levied with effect from such date as may be notified by the Government

Sec 9 (3) - The government, may specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient.

Sec 9 (4) - The Government may specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis.

Sec 9 (5) - The Government may specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it.

- Section 9 (1)
  - CGST shall be levied on all intra-state supplies of goods or services or both.
  - The tax shall be collected in such a manner as may be prescribed and shall be paid by the taxable person.

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Taxable Person [Sec 2(107)] *– means a person who is registered or liable to be registered under Section 22 or Section 24.*

  - Supply of alcoholic liquor for human consumption is outside the purview of GST law. Further, ***un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor***, for human consumption, are excluded from the ambit of GST.
  - The value on which tax shall be computed shall be determined as per Section 15.
  - Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council [Rates presently notified are 0%, 0.125%, 1.5%, 2.5%, 6%, 9% and 14%].
  - Maximum rate of CGST can be 20%.
  - On inter-State supplies of goods and/or services, (IGST) is levied on the transaction value under section 15 of the CGST Act.
  - IGST is the sum total of CGST and SGST/UTGST.
  - Maximum rate of IGST can be 40%.
- Section 9 (2)
  - CGST/IGST on supply of the following items has not yet been levied.
  - It shall be levied with effect from such date as may be notified by the Government
  - on the recommendations of the Council

- Petroleum crude
- High speed diesel
- Motor spirit (commonly known as petrol)
- Natural gas and
- Aviation turbine fuel

3. TAX PAYABLE BY ECO - SECTION 9(5)

Electronic Commerce Operator [Sec 2(45)] *– means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.*

- Sometimes, ECO itself supplies the goods or services through its electronic portal. (E.g., Amazon)
- However, many a times, the products/services displayed on the electronic portal are actually supplied by some other person to the consumer. (E.g., OLX, Swiggy. Book my show)
- The Government may notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it.
- Such notification shall be made on the recommendations of the GST Council.
- In this regard, the notified services are:
  - Services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab, omnibus and motorcycle; (E.g., OLA, Uber)
    In case of Omnibus, ECO is liable to pay GST only if person supplying service through ECO is other than Company.
  - services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, ***except where the person supplying such service through electronic commerce operator is liable for registration***. (E.g., OYO)
  - services by way of housekeeping, such as plumbing, carpentering etc., ***except where the person supplying such service through electronic commerce operator is liable for registration***. (E.g., UrbanClap)
  - Local delivery service where supplier is unregistered person.

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In case of ***Transportation of passengers*** *– ECO is liable to pay GST, whether or not the driver is registered*

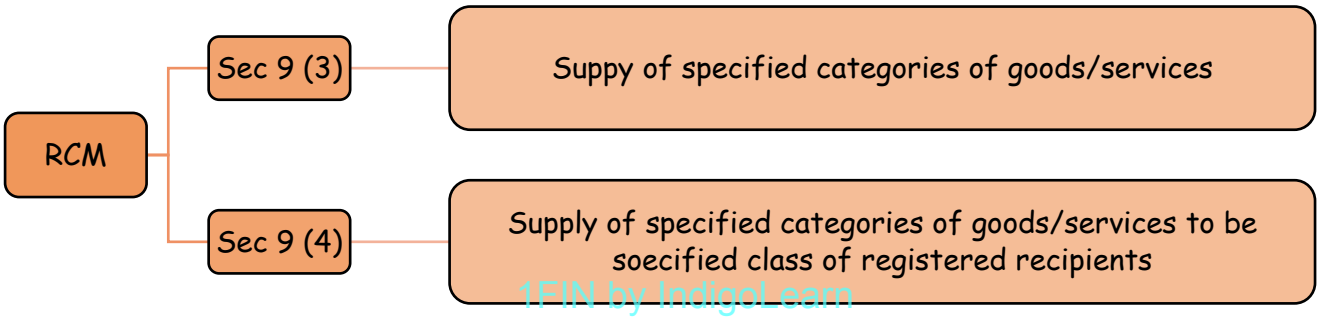
In case of ***Accommodation Services & House Keeping Services*** *– ECO is liable only if such service provider is not registered*

- If ECO does not have a ***physical presence in the taxable territory***, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

- Where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.
- Tax on supplies on Restaurant services supplied through an ECO shall be paid by the ECO provided it is supplied other than through specified premises. Specified premises means those Hotels where room tariff is more than 7500 per day.

4. TAX PAYABLE UNDER REVERSE CHARGE MECHANISM (RCM)

- CGST/IGST shall be ***paid by the recipient*** of goods or services or both, on reverse charge basis, in the following cases:
  - Supply of goods or services or both, ***notified by the Government*** on the recommendations of the GST Council. **[Sec 9(3)]**
  - Supply of specified categories of goods or services or both by an ***unregistered supplier*** to specified class of registered persons. **[Sec 9(4)]**



- All the provisions of the CGST/IGST Act shall apply to the recipient in the aforesaid cases as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- Under indirect tax the burden of such tax has to be ultimately passed on to the recipient. Under reverse charge mechanism, only the compliance requirements, [i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.] have been shifted from supplier to recipient. The burden to pay GST ultimately lies on the recipient only.

4.1 – Goods and Services notified under Reverse Charge Mechanism (RCM)

4.1.1 – Supplies of Goods taxable under Reverse Charge

- List of goods covered under RCM:

Sl No.	Supply of Goods	Supplier of Goods	Recipient of Supply
1.	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	Bidi wrapper leaves(tendu)	Agriculturist	Any registered person

3.	Tobacco leaves	Agriculturist	Any registered person
3A	Following essential oils other than those of citrus fruit namely: Of peppermint (Mentha Piperita) Of other mints: spearmint oil (ex-mentha spicata), water mint – oil (ex-mentha aquatic), Horsemint Oil (ex- mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis.	Any unregistered person	Any registered person
4.	Silk yarn	***Any person who*** manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A	Raw cotton	Agriculturist	Any registered person
5.	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent.
6.	Used vehicles seized and confiscated goods, old and used goods, waste and scrap	Central Government ***excluding Ministry of Railways (Indian Railways),*** State Government, Union territory or a Local authority.	Any registered person.
7.	Priority Sector Lending Certificate	Any registered person	Any registered person.
8	Metal Scrap	Any unregistered Person	Any Registered Person

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Note: Import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

CLARIFICATION ON THE TAXABILITY OF ESOP/ESPP/RSU PROVIDED BY A COMPANY TO ITS EMPLOYEES THROUGH ITS OVERSEAS HOLDING COMPANY:

Companies often incentivize their employees by allotting securities or shares as part of their compensation package. These schemes are commonly referred to as ESPP, ESOP, or RSW, depending on the specific terms agreed upon between the employer and the employee

1. **In case of a cost-to-cost basis, no supply of service is deemed to have taken place between the foreign holding company and the domestic subsidiary. As a result, in such scenarios, there is no GST liability on the reimbursement amount.**

2. **However, if the foreign holding company charges an amount over and above the cost of the securities/shares from the domestic subsidiary, by whatever name it is called (such as fees for facilitating or arranging the transaction), this additional amount is considered a supply of services. GST would be levied on this additional amount under RCM since it is import of service.**

4.1.2 – Supply of services taxable under Reverse Charge

- ***Notification No. 13/2017*** *CT (R) dated 28.06.2017* as amended has notified the following categories of supply of services wherein whole of the tax shall be paid on reverse charge basis.

1. Supply of services by a GOODS TRANSPORT AGENCY (GTA) in respect of transportation of goods by road

    - GTA can opt to pay tax
        - Either under Forward charge @ 18% (i.e., with Input Tax Credit) or @ 5% (i.e., without Input Tax Credit) or reverse charge @5% in the following cases.
    - In case of GTA provided services to specified persons, the recipient is required to pay GST under reverse charge at 5%.
    - The following businesses (recipient of services) are covered under specified persons:

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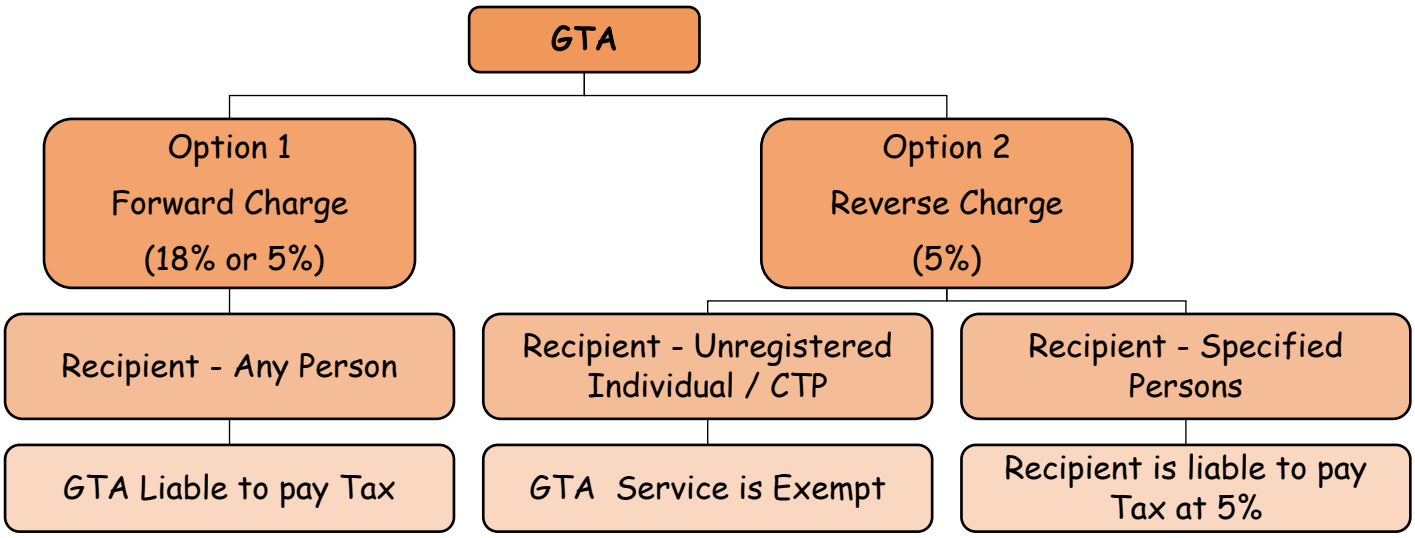
        1. Factory registered under the Factories Act,1948;
        2. A society registered under the Societies Registration Act, 1860 or under any other law
        3. A co-operative society established under any law;
        4. A GST registered person
        5. A body corporate established by or under any law; or
        6. A partnership firm whether registered or not (including AOP)
        7. Casual taxable person
    - In case the recipient is an unregistered person including an unregistered casual taxable person, then he is exempted from GST.
    - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.



2. LEGAL SERVICES

- Supplied by an individual advocate including a senior advocate or firm of advocates, directly or indirectly.
- To any business entity located in the taxable territory.

Legal Service *- means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority*

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3. ARBITRARY SERVICES

- Services supplied by an arbitral Tribunal
- Any Business entity located in taxable territory

Business Entity *- means any entity (individual or organisation), incorporated or not, carrying on business or profession.*

Arbitral/Arbitrary Tribunal *– means*

- *Legally recognized panel of one or more adjudicators;*
- *Which is convened and sits to resolve a dispute*
- *By way of arbitration in a less formal environment than a court trial.*
- *Adjudicators are usually professional, experts in law and mediation.*

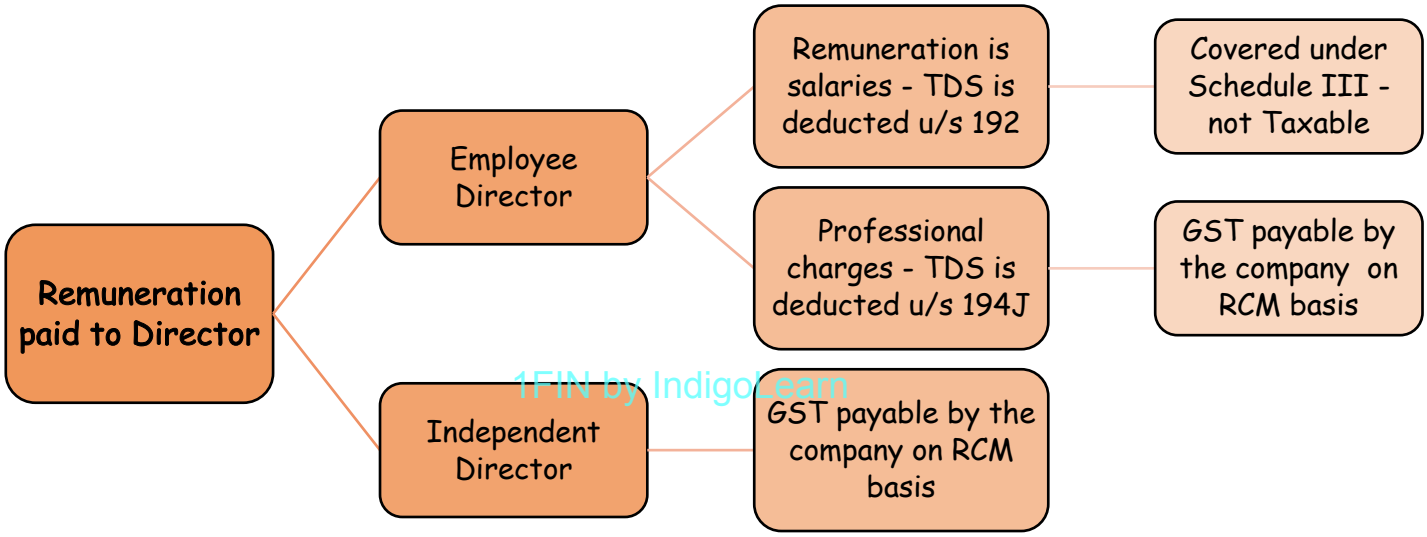
4. SPONSORSHIP SERVICE

- Services supplied by any person other than a body corporate to any 'body corporate or partnership firm located in a taxable territory.

- Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.
- Sponsorship services received by any person other than body corporate or firm, RCM will not apply.

5. Services supplied by a director of a company/body corporate to the said company/body corporate. However, if service is provided by the director in personal capacity, then it is not taxable under RCM. Ex: Renting of immovable property.

- The company or a body corporate located in the taxable territory is liable to pay GST.
- Provided the director in not serving in the capacity of an employee.
- GST is payable on the sitting fees paid to the director.



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6. Services supplied by an Insurance Agent to any person carrying on insurance business.

7. Services supplied by a Recovery Agent to a banking company or a financial institution or a non-banking financial company.

8. Supply of services by any music composer, photographer, artist or the like.

- by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works.
- to a publisher, music company, producer or the like.
- Such publisher, music company, producer is liable to pay GST.

9. Supplier of services by an Author

- by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a)of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.
- Publisher located in the taxable territory is liable to pay GST.

- However, the author can take registration under the CGST and ***choose to exercises the option to pay central tax*** on the services specified (i.e. copyright by author) under forward charge in accordance with Sec 9(1) of CGST Act, 2017 and to comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and
- He shall ***not withdraw the said option*** within a period of ***1 year*** from the date of exercising such option;
- The author has to file a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, as the case may be, that he chooses to exercise his option.
- The author makes a declaration, as prescribed in Annexure II on the invoice issued by him to the publisher.

10. Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI).

- Overseeing committee is a committee set up by RBI for advising on various functions of RBI. RBI is liable to pay GST for the services of such member.

11. Services supplied by individual Direct Selling Agents (DSAs).

- The recipient is a banking company or a non-banking financial company, located in the taxable territory.
- RCM is applicable only in case services are provided by Individual DSA. Thus, in case of services being provided by any body corporate or partnership firm/ LLP, GST is payable under forward charge mechanism.

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12. Renting of residential property to a registered person for the purpose of business.

13. Renting of any immovable property other than residential property by an unregistered person to a registered person other than a person who has opted to pay tax under composition levy

14. Services provided by business facilitator to a banking company.

15. Services provided by an agent of business correspondent to business correspondent.

16. Security services

- Services provided by way of supply of security personnel.
- RCM is applicable only in case 3 conditions are satisfied:
- The service provider is any person other than a company.
- The recipient is a registered person, located in the taxable territory and
- The recipient is not paying tax under composition scheme.

17. Services supplied by any person by way of transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project.

- The supply is done by the land owner.

- To a developer/ promoter who undertakes the construction project
- The liability to pay tax on such transfer is of the developer/promoter.
- The agreement between the two parties is called the Joint Development agreement.

18. Long term lease of land (30 years or more) by any person for construction of a project.

- The supply is done by the land owner.
- To a developer/ promoter who undertakes the construction project
- Such transfer happens against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent.
- The liability to pay tax on such transfer is of the developer/promoter.
- The agreement between the two parties is called the Joint Development agreement.

Supply of TDR, FSI, long term lease (premium) of land *by a landowner to a developer are exempt subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.*
Exemption of TDR, FSI, long term lease (premium) is withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. In such cases, the liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM).

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19. Services supplied by the Central Government excluding Ministry of Railways (Indian Railways), State Government, Union territory or local authority (except Delhi Development Authority – DDA) to a business entity.

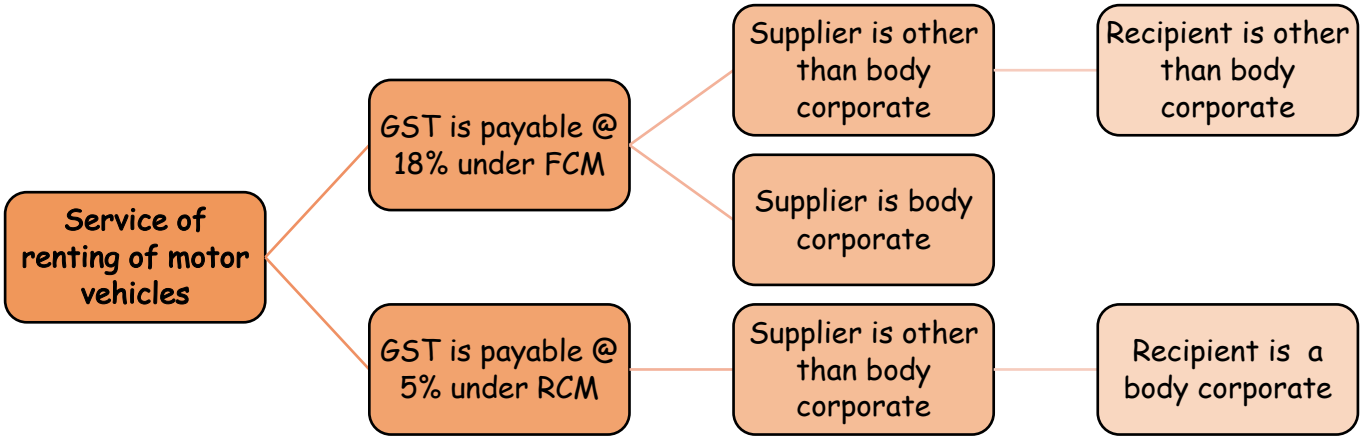
- Any business entity located in the taxable territory is liable to pay GST
- The following services are **excluded** from RCM provision:

1. Renting of immovable property, (provided the recipient is an unregistered person under CGST Act). If recipient is a RP then renting of immovable property is covered under RCM.
2. Services by the Department of Posts and Ministry of Railways (Indian Railways)
3. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
4. Transport of goods or passengers.
5. All services supplied by the Ministry of Railways (Indian Railways) shall be liable for Forward charge mechanism.

20. Services provide by way of renting of a motor vehicle

- Services provide by way of renting of a motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the recipient.

- Service is provided by any person other than a body corporate, who does not issue an invoice charging CGST @ 9%
- The recipient is any body corporate located in the taxable territory
- The recipient is liable to pay GST @ 5%



- 5% GST means 2.5% CGST + 2.5% SGST/UTGST or 5% IGST
- 12% GST means 6% CGST + 6% SGST/UTGST or 12% IGST

21. Services of Lending of securities under Securities Lending Scheme 1997 of Securities and Exchange Board of India (SEBI).

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- The service provider is a Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme of SEBI.
- The service recipient is a Borrower i.e. a person who borrows the securities under the scheme through an approved intermediary of SEBI.
- The lender gets consideration in the form of lending fees.
- The borrower is liable to pay GST.

4.1.3 – Special points regarding GTA and security services

- RCM shall not apply to
  - services provided by a GTA, by way of transport of goods in a goods carriage by road to and
  - services provided by way of supply of security personnel by any person other than a body corporate
- In case the recipient is
  - A Department/ establishment of the Central Government/ State Government/ Union territory; or
  - local authority; or
  - Governmental agencies,
- which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

4.2 – Goods and Services notified under RCM – Section 9(4)

4.2.1 – GST rates in Real estate sector

- The effective rate of GST on real estate sector for the new projects by promoters are as follows:
  - 1% without ITC on construction of affordable houses (area 60 sqm in metros/ 90 sqm in non-metros and value up to Rs.45 lakh).
  - 5% without ITC is applicable on construction of:
    - all houses other than affordable houses, and
    - commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.
- Conditions: - Above tax rates shall be available subject to following conditions:
  - ITC shall not be available.
  - 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons.

4.2.2 – Section 9 (4)

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- Goods and Services notified under reverse charge mechanism (RCM) are related to the real estate sector as mentioned above:

1. If value of inputs and input services purchased from registered supplier is less than 80%, promoter has to pay GST on reverse charge basis, at the rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).
2. Where cement is received from an unregistered person, the promoter shall paytax on supply of such cement on reverse charge basis, at the applicable rate whichis 28% (CGST 14% + SGST 14%) at present
3. GST on capital goods shall be paid by the promoter on reverse charge basis, at the applicable rates.

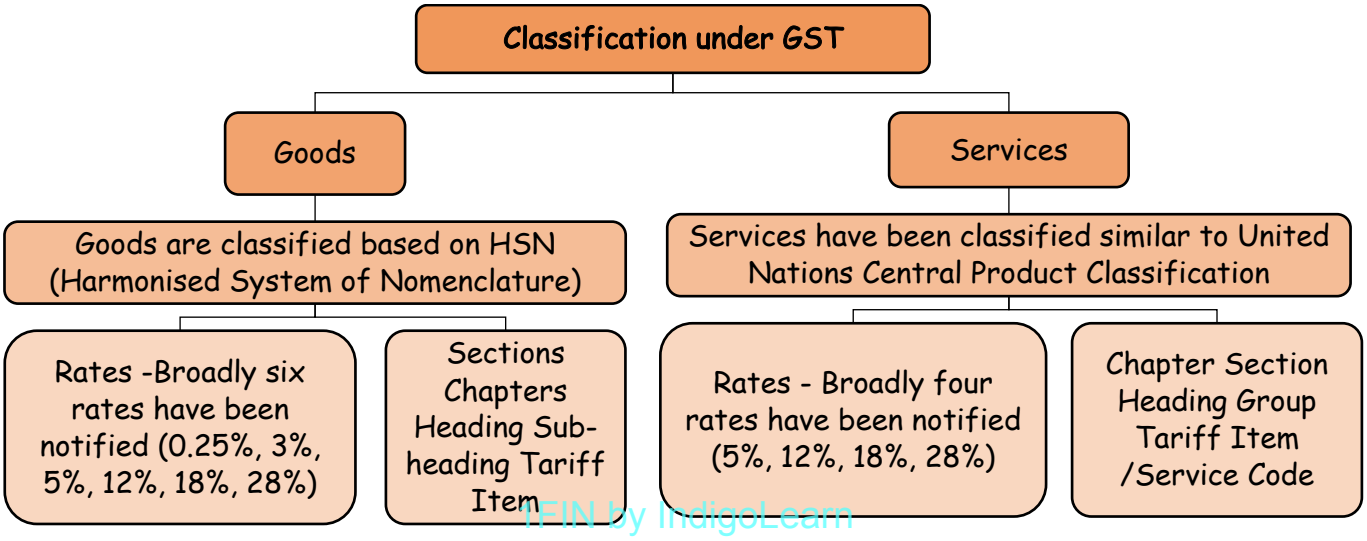
4.2.3 – Section 9 (5)

- Such 9(5) supplies are reported distinctly in returns to segregate them from the ECO's own supplies and ensure proper settlement.
- This is different from Section 52 (TCS): under 9(5) the ECO pays output tax; under 52 the ECO only collects TCS on others' supplies and is not the supplier
- Circular 240/34/2024 (31.12.2024)
  - 9(5) liability must be paid entirely in cash via the electronic cash ledger; ITC cannot be used to discharge this specific 9(5) tax.
  - No blanket ITC reversal is required merely because the ECO pays 9(5) tax; the

ECO may still avail and utilize eligible ITC for its own taxable outputs (e.g., platform fees/commission) under normal rules (only the 9(5) liability itself must be cash-paid).

- ECOs are the tax payers for notified services supplied through their platforms and must report them separately; per the circular, pay that 9(5) tax in cash, but do not reverse eligible ITC for your own outward supplies solely due to 9(5).

5. CLASSIFICATION OF GOODS AND SERVICES



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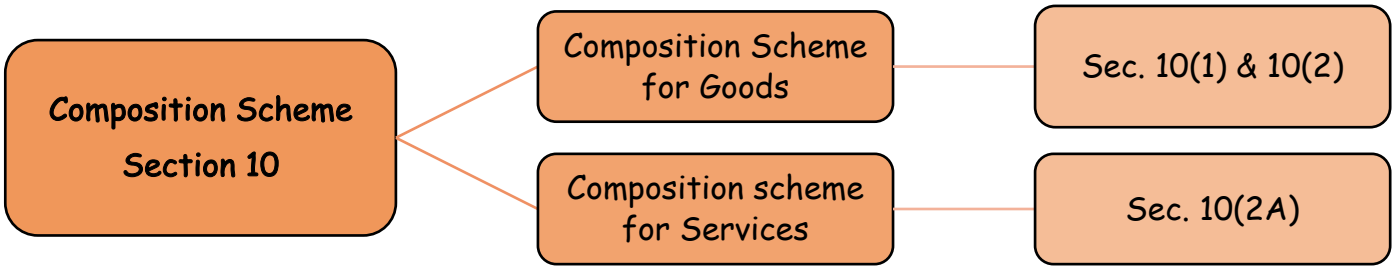
6. COMPOSITION LEVY – SECTION 10

- The composition levy is an alternative method of levy of tax ***designed for small taxpayers*** whose turnover is up to prescribed limit.
- The objective of composition scheme is to bring simplicity and to ***reduce the compliance*** cost for the small taxpayers. No elaborate accounts and records are to be maintained
- The scheme is ***voluntary and optional***. A registered person may opt to pay tax under sec 10 in lieu of tax payable by him u/s 9(1).



6.1 – Eligibility to opt Composition Scheme

6.1.1 – Turnover limit in case of composition levy for goods

- Any registered person with an aggregate turnover in a preceding financial year up to Rs. 1.5 crore shall be eligible for composition levy.
- The turnover limit for composition levy shall be Rs. 75 lakhs in respect of 8 of the Special Category States namely:

• Manipur	• Meghalaya
• Mizoram	• Nagaland
• Sikkim	• Tripura
• Arunachal Pradesh	• Uttarakhand

- In case of Assam, Himachal Pradesh and Jammu and Kashmir, (which are also considered as special category states) the turnover limit will be Rs. 1.5 crore.

6.1.2 – Turnover limit in case of Composition levy for Services

- A registered person opting for composition scheme for services should have an aggregate turnover up to Rs.50 lakh in the preceding FY and he can avail the benefit of said scheme in the current FY till the time his aggregate turnover in the current FY does not exceed Rs. 50 Lakhs.

6.2 – Aggregate Turnover

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Aggregate Turnover [Sec 2(6)]

Includes	Excludes
value of all outward supplies	CGST/SGST/UTGST/IGST/Cess
Taxable Supplies	Value of inward supplies on which tax is payable under RCM
Exempt Supplies	Value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by the way of **interest or discount**
Exports	
Inter-state supplies	
of persons having the same pan be computed on all india basis	

- Exempted supplies includes Exempted goods/services or both which attracts nil rate of tax or wholly exempt from tax and includes non-taxable supply.
- Aggregate turnover includes supply on own account and on behalf of principal.
- Further, explanation 1 to section 10 clarifies that that for the purposes of computing aggregate turnover of a registered person for determining his eligibility to pay tax under section 10(1) and 10(2A) , aggregate turnover
    - ***includes*** value of supplies from the 1st April of a FY up to the date of his becoming liable for registration and

- ***excludes*** value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

- The value of exports and inter-State supplies might be relevant only while determining the aggregate turnover of the preceding FY. These values are not relevant for determining the aggregate turnover of the current FY in which the composition supplier has opted for composition levy as he is not permitted to make inter-State supplies and exports in the said FY.

6.3 – Rate of Tax

6.3.1 – Rates of Tax in case of composition levy for goods

- A registered person, whose aggregate turnover in the preceding FY does not exceed Rs. 1.5 crore, may opt to pay tax calculated at the prescribed rates during the current FY, in lieu of the tax payable by him under regular scheme.

- The effective tax rate is

Supplier	Effective Tax Rate	Supply
Manufacturers	1% i.e. CGST 0.5% + SGST 0.5%	Taxable + Exempted
Traders	1% i.e. CGST 0.5% + SGST 0.5%	Only Taxable
Restaurant and catering services	5% i.e. CGST 2.5% + SGST 2.5%	Taxable + Exempted
Service providers	6% i.e. CGST 3% + SGST 3%	Total turnover

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- Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on their goods and/ or services, etc. Since the rates are already fixed.
- Supplier of inter-State outward supplies of goods is not eligible for composition scheme. Thus, there is no question of IGST.
- There is no restriction on composition supplier to receive inter-State inward supplies of goods.
- There may also be cases where a manufacturer, trader or restaurant service provider is also engaged in supplying a small percentage of other services. To enable such taxpayers to avail of the benefit of composition scheme, section 10(1) permits marginal supply of such other services for a specified value. This specified value is value not exceeding
    - 10 % of the turnover in a State/Union territory in the preceding financial year

      Or
    - Rs. 5 lakh,

    whichever is higher.

6.3.2 – Rates of tax in case of composition levy for services

- A registered person opting for composition levy for services shall pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)] of the turnover of supplies of goods and services in the State or Union territory.
- Turnover in State/ turnover in Union territory means the aggregate value of all taxable supplies and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory but excludes central tax, State tax, Union territory tax, integrated tax and cess and value of inward supplies on which tax is payable by a person on reverse charge basis.

6.4 – Other compliances by the supplier opting for Composition scheme for goods as well as services

- The registered person ***shall not collect any tax from the recipient*** nor shall he be entitled to any credit of input tax [Sec 10(4)]
- They are not required to raise any tax invoice, but ***simply need to issue a Bill of Supply*** wherein no tax will be charged from the recipient.
- Thus, it is Mandatory to ***display on bill of supply*** of the ***words "composition taxable person, not eligible to collect tax on supplies"***.

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- It is also mandatory to display of the words "Composition Taxable Person" on every ***notice and signboard displayed*** at a prominent place at his principal place of business and at every additional place or places of business.
- An eligible person opting to pay tax under the composition scheme shall ***pay tax quarterly and file statements on annual basis.***
- ***Registration*** under GST law ***is compulsory*** for opting for the composition scheme
- He shall ***pay tax under section 9(3)/9(4)*** (reverse charge) on inward supply of goods or services or both.
- If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of ***section 73 or 74 of the CGST Act shall be applicable*** for determination of tax and penalty [Sec 10(5)].
- All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme.
- There is no restriction on composition supplier to receive inter-State inward supplies of goods or services.

- ***Proviso to Section 10(1)*** clarifies that the value of supply of ***exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount***, shall not be taken into account in
    - Computing aggregate turnover in order to determine eligibility for composition scheme u/s 10(1) or u/s 10(2A)
    - the limits of value of other services u/s 10(2) [i.e., 10% of the turnover in a State/Union territory in the preceding financial year or Rs.5 lacs whichever is higher]
    - Determining the value of turnover in a State or Union territory.

6.5 – Who are not eligible for Composition Scheme

6.5.1 – Who are not eligible for Composition Scheme

1. Supplier of goods which are not leviable to tax. [i.e., alcohol liquor for human consumption and 5 petroleum products]
2. Supplier of inter-State outward supplies of goods.
3. Person supplying goods through an electronic commerce operator who is required to collect tax at source under section 52 ***{This point has been amended stating that person supplying goods through ECO can opt for composition scheme provided they are engaged only in Intra state supplies w.e.f 1st October 2023}***

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4. Casual taxable person nor a non-resident taxable person.
5. Manufacturer of notified goods as
    a. Ice cream and other edible ice,
    b. Pan masala,
    c. Tobacco and manufactured tobacco substitutes and
    d. Aerated water
    e. Fly ash (bricks, aggregate, blocks)
    f. Bricks of fossil meals or similar siliceous earths
    g. Building bricks
    h. Earthen or roofing tiles

    If the registered person is a trader of any of the above goods, then he can opt for composition scheme.

6.6 – Opting for Composition Scheme

6.6.1 – First Time Registration

- Any person who is not registered and applies for registration may opt to pay tax under composition levy at the time of registration.
- He has to fill in Part B of the registration form, viz., FORM GST REG-01. The same shall be considered as an intimation to pay tax under composition levy.

- Such intimation shall be considered only after the grant of registration to the applicant and
- His option to pay tax under composition levy shall be effective from the date from which registration is effective.
- Thus, a person applying for registration can opt for composition at any time of the financial year.

6.6.2 – Already registered under GST

- A registered person who opts to pay tax under composition levy scheme shall electronically file an intimation in prescribed form on the GST Common Portal prior to the commencement of the FY for which said option is exercised.
- He shall also furnish the statement in prescribed form within 60 days from the commencement of the relevant FY.
- Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.
- The option to pay tax under composition levy shall be effective from the beginning of the FY.

6.6.3 – Treatment of ITC

- Where any registered person who has availed of ITC opts to pay tax under Composition scheme u/s 10(1) or u/s 10(2A)
    - He shall pay an amount equivalent to the ITC
    - in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods
    - by way of debit in the electronic credit ledger or electronic cash ledger.
    - as if the supply made attracts the provisions of section 18(4) of the CGST Act and the rules made thereunder.

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Person	Can opt for Composition Levy	It shall be effective from
Person applying for registration	At any time during the year while applying for registration	The date from which registration is effective
Registered person	From the beginning of any FY. So has to apply prior to the FY.	The beginning of said FY

6.7 - Validity of Composition Levy

6.7.1 - Withdrawal from the composition scheme by a taxpayer who ceases to satisfy any of the prescribed conditions

- The option to pay tax under composition scheme lapses from the day the registered person ceases to satisfy any of the prescribed conditions. Such as from the day on which aggregate turnover exceeds the specified limit (Rs.1.5 crore/ Rs. 75 lakh) during the FY. [Sec 10(3)]
- Such person is required to pay tax under regular scheme under section 9(1) from that day.
- He shall issue tax invoice for every taxable supply made thereafter.
- He is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.

- The effective date from which such withdrawal shall take effect shall be the date indicated by him in his intimation.
- But such date may not be prior to the commencement of the financial year in which such intimation is being filed.

6.7.2 - Withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme

- The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in prescribed form.
- The effective date from which withdrawal from the composition scheme shall take effect shall be the date indicated by him in his application.
- But such date may not be prior to the commencement of the financial year in which such application for withdrawal is being filed.

6.7.3 - Denial of option to pay tax under the composition scheme by tax authorities

- Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition scheme or has contravened the provisions of the CGST Act or provisions of this Chapter, he may issue a show cause notice (SCN) to such person.
- Upon receipt of reply to SCN, he shall pass an order either accepting the reply, or denying the option to pay tax under composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.
- In case of denial of option to pay tax under composition levy by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities.
- However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules.
- In each of the above cases, such person may
    - furnish a statement
    - in prescribed form
    - containing details of the stock of
    - inputs and inputs contained in semi-finished or finished goods held in stock by him
    - on the date on which the option is withdrawn/denied,
    - within a period of 30 days
    - from the date from which the option is withdrawn/ or from the date of the order denying composition scheme.

Convert	Normal scheme [Sec 9(1) to Composition scheme [Sec 10]	Composition scheme [Sec 10] to Normal scheme [Sec 9(1)]

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When can the registered person convert	Before the start of the financial year	Any time during the Financial year
ITC on the inputs (stock) held in hand on the date of conversion	Pay the credit already utilised	Avail credit
Form to be filed	ITC - 03	ITC – 01

ILLUSTRATIONS

Illustration 1

M/S Sai Trading Company, an eligible registered dealer in goods making intra state supplies within the state of Andhra Pradesh, reported an aggregate turnover of Rs. 78 Lakhs in the preceding financial year

(i) Determine whether Sai Trading Company will be eligible for composition levy, ason 31-10-17

(ii) Will your answer be different, if in the above scenario, M/s Sai Trading Company is making intra state supply within the state of Jammu and Kashmir?

Illustration 2

Decide which person is liable to pay GST in the following independent cases, where recipient is located in the taxable territory. Ignore the aggregate turnover and exemption available.

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a. Mr Raghu provided sponsorship services to WE-WIIN Cricket academy an LLP

b. "Safe Trans", a Goods Transport Agency, transported goods of Kapil & Co., a partnership firm which is not registered under GST

Illustration 3

State person liable to pay GST in the following independent cases provided recipient islocated in the taxable territory:

(a) Services provided by an arbitral tribunal to any business entity.

(b) Sponsorship services provided by a company to an individual.

(c) Renting of immovable property service provided by the Central Government to a registered business entity.

Illustration 4

A person availing composition scheme in Haryana during a financial year crosses theturnover of Rs. 1.5 crore during the course of the year i.e. he crosses the turnover of Rs. 1.5 crore in December?

Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March?

Illustration 5

Mohan Enterprises has two registered business verticals in Delhi. Its aggregate turnover for the preceding year for both the business verticals was Rs. 90 lakh. It wishes to paytax under composition levy for one of the vertical in the current year while under normallevy for other vertical.

You are required to advice Mohan Enterprises, whether he can do so?

Illustration 6

Determine whether the supplier in the following cases are eligible for composition levyprovided their turnover in preceding year does not exceed Rs. 1.5 crores:

(i) Mohan is engaged in providing only legal services in Rajasthan and is registeredin the same State.

(ii) Sugam Manufacturers has registered offices in Punjab and Haryana and suppliesgoods in neighboring States.

Illustration 7

P Private Limited agrees to sponsor a sports event organized by Pink City Club in Jaipur. P Private Limited has paid an amount of Rs. 50,00,000 for such sponsorship of the sports event Consequently, said event was named after the brand name of P Private Limited. Examine who is the person liable to pay tax in the given case.

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Illustration 8

Arpan Singhania is a director in Narayan Limited. The company paid him the sitting fee amounting to Rs. 25,000, for the month of January. Further, salary was paid to Arpan Singhania amounting to Rs. 1.5 lakh for the month of January on which TDS was also deducted as per applicable provisions under Income-tax law. Tapasya & Associates, in which Arpan Singhania is a partner, supplied certain professional services to Narayan Limited in the month of January for an amount of Rs. 2 lakhs. Discuss the person liable to pay tax in each of the supplies involved in the given case.

Illustration 9

M/s All-in-One, a partnership concern and a registered supplier under GST, is engaged in providing various services under one roof. The concern provides the following information pertaining to supply made/input services availed by it during the month of March 20XX:

	Particulars	Rs.
i	Provided Direct Selling Agent Service to Y bank Ltd.	4,00,000
ii	Provided Security services to ABC Pvt. Ltd, a registered person under GST	60,000

iii	Provided security services to PSR Trust, an unregistered person under GST	1,00,000
iv	Provided renting of motor vehicle to Amaze Tours Ltd. and supply value included cost of fuel	75,000
v	rovided renting of motor vehicle to Priti & Co., CA firm and supply value included cost of fuel	40,000
vi	Availed representational service from PB and Co., a law firm towards a Consumer Court case	70,000

Determine the GST liability of M/s All-in-One for the month of March, 20XX by giving necessary explanations for treatment of various items.

Rate of tax for both inward and outward supply is CGST /SGST@ 9% each except renting a vehicle, for which CGST /SGST@ 2.5% each is applicable.

M/s All-in-One commenced its business from February, 20XX. All the supplies are intra-State only.

Illustration 10

Mr. Sanjay of New Delhi made a request for a Motor cab to "Super ride" for travelling from New Delhi to Gurgaon (Haryana). After Mr. San jay pays the cab charges using his debit card, he gets details of the driver Mr. Jorawar Singh and the cab's registration number.

1FIN by IndigoLearn

"Super ride" is a mobile application owned and managed by D.T. Ltd. located in India. The application "Super ride" facilitates a potential customer to connect with the persons providing cab service under the brand name of "Super ride".

D.T. Ltd. claims that cab service is provided by Mr. Jorawar Singh and hence, he is liable to pay GST. With reference to the provisions of IGST Act, 2017, determine who is liable to pay GST in this case? Would your answer be different, if D.T. Ltd. is located in New York (USA)? Also briefly state the statutory provisions involved.

Illustration 11

Examine whether the suppliers are eligible for composition levy under section 10 in the following independent cases in the beginning of the current financial year.

a) Technology Enterprises, registered in Jalandhar, Punjab, is engaged in manufacturing computer systems. Its aggregate turnover in the preceding financial year is Rs. 125 Lakhs. Technology Enterprises supplies the computer systems manufactured by it within the State of Punjab only. With a view to expand its business operations, it will also start providing the repairing services of computer systems in the current financial year.

b) M/s. Siddharth & Sons, registered in Delhi, owns a restaurant 'Tasty Foods' with a turnover of Rs. 112 Lakhs in the preceding financial year. In view of the growing customer demand, it will also start intra-State trading of juices in Delhi.

c) Sitaram Associates, registered in Sikkim, is engaged in running a food chain 'Veg. Kitchen' in the State. It has a turnover of Rs.73 lakhs in the preceding financial year. In the current financial year, it decides to shut down the food chain owing to huge losses being incurred in the said business. Instead, it will start providing intra-State architect services.

d) Deepti Services Ltd., registered in Uttarakhand, is exclusively providing hair styling services. It has turnover of Rs. 34 lakhs in the preceding financial year.

ill your answer be different, if Deepti Services Ltd. also start supplying beauty products along with providing hair styling services in the current financial year?

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4. EXEMPTIONS FROM GST

1. INTRODUCTION

- For determining the liability to pay the tax, one needs to further check whethersuch supply of goods and/or services are exempt from tax.
- under GST, a supply not leviable to tax is also included within the purview of 'exempt supply'.

Exempt supply [Sec 2(47)] - Supply of any goods or services or both

- which attracts nil rate of tax or
- which may be wholly exempt from tax and
- includes non-taxable supply Whether as principal, agent or in any other capacity,

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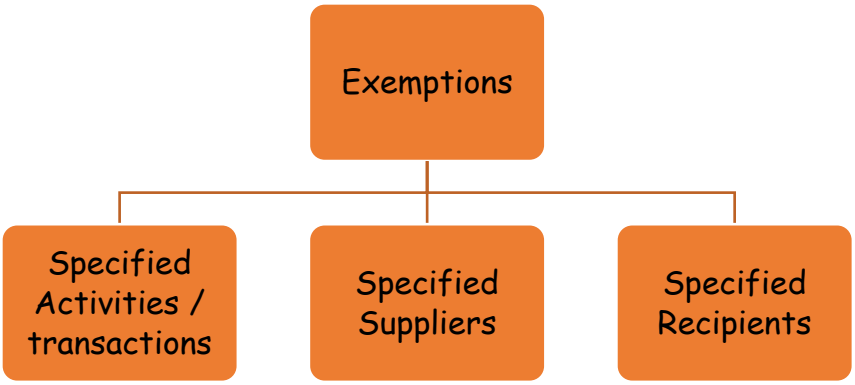
Non-taxable supply [Sec 2(78)] - Supply of any goods or services or both Which is not leviable to tax under CGST Act or under the IGST Act.

- Exemption under GST may be provided in any of the following manner:
  - Exemption in respect of specified activities or transactions - Consequently,the status of the supplier or recipient becomes immaterial.
  - Exemption is given to specified suppliers only – Here, the status of recipient becomes immaterial.
  - Exemption is given to specified recipient only - Here, the status of supplierbecomes immaterial.
  - Exemption is given only when activities or transactions are carried out by specified suppliers for specified recipients only.
- Under GST, essential goods/services, i.e., public consumption products/services, have been exempted - Items such as unbranded atta/ maida/ besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST. (Not in syllabus. Only for information)
- Further, essential services like health care services, education services, etc. have also been exempted.



2. POWER TO GRANT EXEMPTION FROM GST [SEC 11]

2.1 Exemption notification

- GST law empowers the ***Central Government or State Government*** as the case may be to grant exemption from tax.
- The exemption is granted on ***recommendation of the GST Council.***
- Exemption can be from ***whole of the tax or part of the tax***.
- It is granted in ***public interest***.
- Exemption can be granted to ***goods or services or both*** of any specified description.
- It is either granted by way of issuance of ***notification or by a special order*** in case of the circumstances of an exceptional nature.
- It is either granted ***absolutely*** [i.e. unconditional exemption; exemption is not subject to any conditions] ***or conditionally*** [i.e. exemption is subject to specified conditions].
- The ***absolute/ unconditional*** exemption is ***mandatory*** in nature.
- However, where the exemption is ***conditional,*** it is at the ***option*** of the registered person whether to avail the same or not.
- The exemption granted by way of notification is ***effective*** from such date as maybe ***specified in such notification***.
- The special order is issued under ***circumstances of an exceptional nature*** to be stated in such order.
- Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.
- where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the ***registered person*** supplying such goods or services or both ***shall not collect the tax, in excess of the effective rate,*** on such supply of goods or services or both.
- **Central Government has power not to recover goods and services tax not levied or short- levied as a result of general practice - sec. 11A of CGST Act/Sec. 6A**

1FIN by Indigolearn

of IGST act - Finance Act, 2024

2.2 Explanation to notification

- Wherever the Government feels that there is a need to
  - clarify the scope or
  - applicability of any notification/order issued under this section,
- It can issue an ***explanation within 1 year of issue of said notification/ order.***
- Such explanation shall have effect as if it was there when first such notification/ order was issued, i.e. explanation so inserted would be ***effective retrospectively***.
- It is hereby clarified that the ***explanation so inserted*** for a particular entry in thenotification, ***is effective from the inception of the entry in notification*** and notfrom the date from which the notification (that inserted said explanation) becomes effective.
- Example - Principal Notification No. 11/2017 CT (R) dated 28.06.2017 came into force with effect from 01.07.2017. Thereafter, a new entry – Entry no. 3(vi) was inserted w.e.f. 21.09.2017. Subsequently, an explanation was also inserted with respect to entry no. 3(vi) by issue of a notification on 26.07.2018 [i.e., within 1 yearof the insertion of entry 3(vi)]. Although the effective date mentioned in the notification which inserted said explanation was 27.07.2018, said explanation willbe effective from the inception of entry 3(vi) in notification i.e. 21.09.2017 and not27.07.2018.

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3. SERVICES EXEMPT FROM TAX

- ***Notification No. 12/2017 dated 28.06.2017*** has exempted the various services wholly from CGST. Each of the entries of the exemption notification have been discussed below.

Services related to charitable and religious activities

3.1.1 Services by charitable institutions

- Services by an entity
  - registered under section 12AA or 12AB of the Income-tax Act, 1961
  - by way of charitable activities.

  are exempt from whole of GST.

- 'Charitable activities' is defined under Income tax act 1961.

Charitable activities – The term 'charitable activities' means activities relating to-

(i) Public Health by way of -

(A) Care or counselling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons afflicted with HIV or AIDS;

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) Public awareness of preventive health, family planning or prevention of HIV infection;

(ii) Advancement of religion, spirituality or yoga

(iii) Advancement of educational programmes/skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) Preservation of environment including watershed, forests & wildlife.

- There could be many other services provided by such charitable and religious trusts which are not covered by the definition of charitable activities and hence, suchservices would attract GST. For instance, grant of advertising rights to a person on the premises of the charitable/religious trust or on publications of the trust, or granting admission to events, functions, celebrations, shows against admission tickets or fee etc. would attract GST.

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Services provided to charitable or religious trusts are not outside the ambit of GST. Unless specifically exempted, all goods and services supplied to charitable or religious trusts are leviable to GST

- **Arranging yoga and meditation camp by charitable trusts** - Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the **primary and predominant activity,objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.**
- However, if it merely or primarily provides accommodation or serves food

and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable.

Services by a person by way of Conduct of any religious ceremony

- Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.

Services by a person by way of renting of precincts of a religious place

- Services by a person by way of renting of precincts of a religious place meant forgeneral public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a trust or an institution registered under Income-tax Act.
- However the **following are subject to GST**:
  1. Renting of ***rooms*** where charges ***are*** Rs.***1,000 or more per day,***
  2. Renting of ***premises,*** community halls, kalyanmandapam or open area, andthe like where charges are ***Rs.10,000 or more per day,***
  3. Renting of ***shops*** or other spaces for business or commerce where charges are Rs. 10,000 or more per month.

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- Renting of premises, community halls, kalyana mandapam or open area can be for any purpose and not merely for religious ceremonies. The rent is exempt as long as it is less than Rs.10,000 per day.

Religious place – means a place which is primarily meant for conduct of prayersor worship pertaining to a religion, meditation, or spirituality.

Precincts – The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered asbeing located in the precincts of the religious place and extended the benefit of above exemption.

- Activities other than - conduct of religious ceremony and renting of precincts of religious place - will be taxable irrespective of the manner or the name in which the consideration is received.
- **For example,** if donation is received with specific instructions/mutual understanding between the donor and the receiver that religious place will host an advertisement promoting business of the donor, such donation will be subject to GST. However, if donation is received without such instructions or without a *quid pro quo* in the form of supply of any goods or services or both bythe receiver to the donor, it shall not be subject to GST.

Services by a specified organisation in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement.

- Religious Yatras/pilgrimage organised by any charitable or religious trust are not exempt. Only such services of religious pilgrimage as are provided by ***specified organization*** in respect of a religious pilgrimage facilitated by the Government of India (GoI), under bilateral arrangement are exempt from GST.
- ***specified organization*** as referred herein means:
  - Kumaon Mandal Vikas Nigam Limited (KMVN), a Government of Uttarakhand Undertaking.
  - Haj Committee of India' or 'State Haj Committee including Joint State Committee'.
- KMVN organises religious pilgrimage to Kailash Mansarovar and Haj committee organised religious pilgrimage to Haj.

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Services by way of training or coaching in recreational activities relatingto Arts or Culture, by an Individual, (or) Sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.

- Training or coaching relating to all forms of arts, culture by Individual is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre etc of any school, tradition or language
- Training or coaching in Sports by Charitable entities registered under Section 12AA or 12AB is exempt.
- Training or coaching in recreational activities in areas other than arts, culture or sports is outside the purview of this entry.

Services related Agriculture activities

Services by way of loading, unloading, packing, storage and warehousingof rice.

- The services provided by way of loading, unloading, packing, storing and warehousing of rice by one person to another is exempt from GST.
- The said services provided ***only with respect to rice*** is covered.

Services by way of warehousing of minor forest produce.

Minor forest produce – means Non-timber forest produce of plant origin and will include bamboo, canes, fodder, leaves, gums, waxes, dyes, resins and many forms of food including nuts, wild fruits, honey, lac, tusser etc.

Services relating to cultivation of plants and rearing of all life forms

- Services relating to cultivation of plants and rearing of all life forms of animals, ***except the rearing of horses,*** for food, fibre, fuel, raw material or other similar products or agricultural produce by way of:
  (a) agricultural operations ***directly related to production*** of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
  1FIN by IndigoLearn
  (b) supply of ***farm labour,***
  (c) ***processes carried out at an agricultural farm*** including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
  (d) ***renting or leasing of agro machinery or vacant land*** with or without a structure incidental to its use;
  (e) ***Loading, unloading, packing, storage or warehousing*** of agricultural produce;
  (f) Agricultural extension services;
  (g) services by any ***Agricultural Produce Marketing Committee*** or Board or services provided by a commission agent for sale or purchase of agricultural produce.
- The above entry ***includes*** activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.
- processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting,

grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market are also exempt.

- The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in this entry.
- Agricultural Extension Services (AES) have been defined to mean the application of scientific research and knowledge to agricultural practices through farmer education or training.
- The main objective of AES is to transmit latest technical know-how to farmers. It also focuses on enhancing farmers' knowledge about crop techniques and help them to increase productivity. This is done through training courses, kisan call centres, farm visits, on farm trials, kisan melas, kisan clubs, advisory bulletins and the like.
- Agricultural Produce Marketing Committee or Board means any committee or board set up under a State Law for the time being in force for purpose of regulating the marketing of agricultural produce. They are set up in most of the States.
- Any service provided by such bodies which is ***not directly related to cultivation of plants*** and rearing of all life forms of animals, except the rearing of horses, ***will be liable to tax*** e.g. renting of shops or other property for commercial purposes.
- With regard to agriculture produce the following should be noted:
  - Green tea leaves and not tea is the "agricultural produce" eligible for exemption.
  - Similarly Coffee beans and not Coffee is the agriculture produce.
  - Jaggery is also not an agricultural produce.
  - Pulses (dehusked or split) are also not agricultural produce. However, whole pulse grains such as whole gram, rajma etc. are covered in the definition ofagricultural produce.

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Services by way of storage/ warehousing of cereals, pulses, fruits and vegetables

- Services by way of storage/ warehousing of cereals, pulses, fruits and vegetables.

Carrying out an intermediate production process

- Carrying out an intermediate production process as job work in relation to

cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested.

Services by way of artificial insemination of livestock (other than horses).

- Services by way of artificial insemination of livestock (other than horses) is exempt.

Medical services / Health care services

- Services by a veterinary clinic in relation to health care of animals and Birds isexempt.
- Services by way of health care services by a
  - Clinical establishment
  - An authorised medical practitioner or
  - Para-medics.
- Services provided by way of transportation of a patient in an ambulance - Transportation of a patient in an ambulance by any person other than clinical establishment/ authorized medical practitioner/ para-medics is exempt.

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Health care services means

- Any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and
- Includes services by way of transportation of the patient to and from a clinical establishment,
- But does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Recognised systems of medicine in India:

- Allopathy
- Yoga
- Naturopathy
- Homeopathy
- Siddha
- Unani

- Ayurveda
- Any other system of medicine that may be recognized by Central Government

- Diagnostic or investigative services of diseases provided by pathological labs arenot liable to GST.
- Paramedics are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants etc.
- Rent of rooms provided to in-patients in hospitals is exempt.
- Hospitals hire senior doctors/ consultants/ technicians independently. Such persons do not have any contract with the patient. Hospitals pay them consultancy charges and there is no employer-employee relationship between them. Services provided by such senior doctors/ consultants/ technicians, whetheremployees or not, are healthcare services which are exempt from GST.
- Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the hospitals from outdoor caterers.
- When outsourced, there is no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC.
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- Food supplied to the in-patients as advised by the doctor/nutritionists is a part ofcomposite supply of healthcare and not separately taxable. Other supplies of food by a hospital to outpatients (not admitted) or their attendants or visitors are taxable.
- Supply of services other than healthcare services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. will be subject to GST.
- Health care service of IVF to treat infertility is also exempt.
- This exemption is available even when the said services are provided by religious or charitable trust.
- Services by way clinical establishment charging above Rs. 5,000 per day for the room to a person is NOT Exempt. However, exemption will apply in case of ICU, ICCU, CCU and NICU.

Construction services

Services provided by way of pure labour contracts

- Services provided by way of ***pure labour contracts*** of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or ***any other original works***

pertaining to the beneficiary-led individual house construction or enhancement under ***the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.***

- **Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana** (hereinafter referred to as PMAY) is a programme launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) which envisions provision of Housing for All by 2022 when the nation completes 75 years of its independence.
- The mission seeks to address the housing requirement of urban poor including slum dwellers through following, *inter alia*, programme verticals:
  - Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource.
  - Promotion of Affordable Housing for weaker section through credit linked subsidy.
  - Affordable Housing in Partnership with Public & Private sectors.
  - Subsidy for beneficiary-led individual house construction/enhancement.

- The term 'original works' means-
  - all new constructions;
  - all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
  - erection, commissioning or installation of plant, machinery or equipment or structures, whether prefabricated or otherwise.

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Services supplied by Electricity Distribution Utilities

- Services supplied by ***Electricity Distribution Utilities*** by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network ***upto the tube well of the farmer or agriculturalist for agricultural use.***

Services by way of pure labour contracts of construction, erection,

- Services by way of ***pure labour contracts*** of construction, erection, commissioning, or installation of original works pertaining to a ***single residential unit otherwise than as a part of a residential complex.***
- The term 'residential complex' means any complex comprising of a building or buildings, having more than one single residential unit.
- Further, 'single residential unit' means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

Service of transportation of passengers

Service of transportation of passengers through rail, inland waterways etc.

- Service of transportation of passengers, ***with or without accompanied belongings***, by—
  - railways in a class ***other than***—
    - ✓ first class; or
    - ✓ an air-conditioned coach;
  - metro, monorail or tramway;
  - inland waterways;
  - public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
  - metered cabs or auto rickshaws (including e-rickshaws).

  In case of metered cabs or auto rickshaws (including e-rickshaws), no exemption shall apply for service supplied through an electronic commerce operator (ECO), and notified under section 9(5) of the CGST, 2017

- To qualify for exemption under this entry, the public transport by a vessel between places located in India should not be predominantly for tourism purposes.

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  - Normal public ships or other vessels that sail between places located in India would be covered in this entry even if some of the passengers on board are using the service for tourism because predominantly, such service is not for tourism purpose.

However, services provided by leisure/charter vessels/a cruise ship, predominant purpose of which is tourism, would not be covered in here even if some of the passengers in such vessels are not tourists.

- **E-rickshaw:** means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers as the case may be.
- **Metered cab:** means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment. But does not include radio taxi.

Services provided to the Central Government, by way of transport of passengers at an RCS airport.

- Services provided to the Central Government,
- by way of transport of passengers with or without accompanied belongings,
- by air, embarking from or terminating at an ***RCS (Regional Connectivity Scheme) airport***, against consideration in the form of ***viability gap funding***.
- However, nothing contained in this entry shall apply on or after the expiry of a ***period of 3 years*** from the date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.
- Under RCS, the underserved Airports of India are aimed to be connected to key airports through flights that will cost INR 2,500 for per hour flight.

Transport of passengers, by air in economy class, from or to specified airports, contract carriage or stage carriage.

- Transport of passengers, with/ without accompanied belongings, by –
  - Air in economy class, embarking from or terminating in an airport located in the State of ***Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland,Sikkim, or Tripura or at Bagdogra located in West Bengal;***
  - Non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter orhire; or
  - Stage carriage other than air- conditioned stage carriage.
- **Radio taxi:** means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service.
- **Stage carriage**: means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.
- Contract carriage includes maxi cab and motor cab

"However, nothing contained in 2nd and 3rd point mentioned above shall apply to services supplied through an electronic commerce operator (ECO), and notified under section 9(5) of the CGST, 2017

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Services by way of transportation of goods

3.1.2 Services by way of transportation of goods by road

- Services by way of transportation of goods by road ***except the services of***
  - A goods transportation agency (GTA);
  - A courier agency;
- The nature of service provided by 'Express Cargo Service' falls within the scopeand definition of the courier agency.
- Courier agency means door-to-door transportation of time-sensitive documents, goods or articles.
- Goods transport agency (GTA) has been defined in the Notification to mean any person who:
  - provides service in relation to **transport of goods by road** and
  - **issues consignments note**, by whatever name called.
- Issuance of a consignment note is the *sine-qua- non* for a supplier of service to be considered as a GTA. If a consignment note is issued, it indicates that the lienon the goods has been transferred (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee.
- Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a result the services provided bysuch individual transporters are exempt from GST.
- **Consignment note** - means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is ***serially numbered,*** and contains:
  1) the name of the consignor and consignee,
  2) registration number of the goods carriage in which the goods are transported,
  3) details of the goods transported,
  4) details of the place of origin and destination,
  5) gross weight of the consignment;
  6) GSTIN of the person liable for paying tax whether consignor, consignee orGTA
  7) other particulars as prescribed for a tax invoice

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When is GTA service exempt

- GTA services provided to an ***unregistered person [including unregisteredcasual taxable person]*** are ***exempt*** from GST.
- GTA services provided to ***registered casual taxable*** person and following persons, even if unregistered under GST law, are ***liable to tax***:

1) A factory registered under Factories Act,
2) Society registered under Societies Act,
3) Co-operative society,
4) Body corporate and
5) Partnership firm including AOP

- Services provided by a GTA, by way of transport of goods in a goods carriage, is exempt when provided to, -
  1) A Department or Establishment of the Central Government or State Government or Union territory; or
  2) Local authority; or
  3) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.
- If any intermediary and ancillary service such as, loading/ unloading, packing/unpacking, transhipment and temporary warehousing, which are provided in the course of or in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply.
- However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.
- Renting of trucks and other vehicles with operator for a specified time period is not service by way of transportation of goods by road and shall be taxable. Same point will apply even to transport of minerals within mining area by vehicles deployed with driver for a specific duration of time.

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GTA services exempt for specified goods and in specified cases

- Transportation of the following goods by a GTA in a goods carriage is exempt
  1) Agricultural produce
  2) Milk, salt and food grain including flours, pulses and rice
  3) Organic manure
  4) *Newspaper or magazines registered with the Registrar of Newspapers
  5) Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
  6) Defence or military equipments.

Services by way of transportation by rail or a vessel

- Services by way of transportation by rail or a vessel from one place in India to another of the following goods –
  1) Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
  2) Defence or military equipments;
  3) Newspaper or magazines registered with the Registrar of Newspapers;
  4) Agricultural produce;
  5) Milk, salt and food grain including flours, pulses and rice; and
  6) Organic manure.

Banking and financial services

Services by way of extending deposits, loans or advances

- Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt from GST.
- Interest charged on outstanding credit card balances has been specifically excluded. Hence, the same is liable to GST.
- This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.
- ***Interest:*** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but ***does not include any service fee or other charge*** in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.
- ***Examples*** – Interest on Fixed deposit, savings deposit, overdraft facility, mortgages or loans with collateral security, corporate deposits etc.
- ***Service charges/ fees, documentation fees, broking charges, administrative charges,*** entry charges or such like fees or charges collected over and above interest on loan, advance or a deposit are not exempt and thus, represent taxable consideration.
- ***Invoice discounting/ cheque discounting*** or any other similar form of discounting is ***covered*** only to the extent consideration is represented by way of discount as such discounting is a manner of extending a credit facility or a loan.
- ***Any interest/ delayed payment charges*** charged to clients for delay in payment of brokerage amount/ settlement obligations/ margin trading facility, is ***exempt from GST*** since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances.

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- ***Additional/ penal interest on the overdue loan*** - In cases where the Equated Monthly Instalment (EMI) is not paid at the scheduled time, there is a levy of additional/ penal interest on account of delay in payment of EMI.
  - If the purchase is in the nature of instalment purchase and the buyers pays the interest to the seller on delayed payment of instalment, such interest would be included in the value of supply.

- However If the purchase is made out of loan taken from any party where loan repayment is made in instalments and interest is payable by the buyer on delayed payment of such instalment, it is covered under the exemption entry. As long as the levy of additional/ penal interest satisfies the definitionof "interest" as mentioned above, the same cannot be treated as consideration for liquidated damages. Consequently, transaction of levy of additional/ penal interest does not fall within the ambit of Schedule II of theCGST Act, 2017 i.e. "agreeing to the obligation to refrain from an act, or totolerate an act or a situation, or to do an act. Instead it is exempt from GST.

Services by way of inter se sale or purchase of foreign currency

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- Services by way of inter se sale or purchase of foreign currency amongst banks orauthorised dealers of foreign exchange or amongst banks and such dealers is exempt from GST.
- Such services ***provided to general public will not be covered*** in this entry as this entry only covers sale and purchase of foreign exchange between banks and authorized dealers of foreign exchange or between banks and such dealers.

Services provided to Basic Saving Bank Deposit (BSBD) account holders

- Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) is exempt.

Services by an acquiring bank

- Services by an acquiring bank, to any person in relation to settlement of an amount ***upto Rs. 2,000 in a single transaction*** transacted through credit card, debit card, charge card or other payment card service.
- **Acquiring bank: -** means any banking company, financial institution including non-banking financial company or any other person, who makes the payment toany person who accepts such card.

Services by an intermediary of financial services

- Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

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- The intermediary of financial services in IFSC is a person,-
  - who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
  - who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
  - who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or
  - who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

Education Services

3.1.3 Services *provided by* an educational institution

- Services provided by an educational institution
  - to its students, faculty and staff; and
  - by way of conduct of entrance examination against consideration in the form of entrance fee; ***are exempt.***

1FIN by IndigoLearn

Educational institution means an institution providing services by way of,-

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

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; {Only course recognized by Indian Law}

(iii) education as a part of approved vocational education course

- In order to be covered under the above mentioned exemption, the education service should be delivered as part of curriculum for obtaining a qualification recognized by any law for the time being in force.
- Examples :
  - Conduct of degree courses by colleges, universities or institutions – ***Eligible for exemption***
  - Training given by private coaching institutes – ***Not eligible for exemption*** – as such training does not lead to grant of a recognized qualification

- Education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country – ***Not eligible for exemption*** – as onlya course recognized by an Indian law is covered herein.
    - An approved vocational education course means
    - A course run by an ITI/ ITC affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) offering courses in designated trades notified under the Apprentices Act, 1961.
    - A Modular Employable Skill Course, approved by NCVT, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.
    - The Modular Employable Skills is the minimum skill set which is sufficient forgainful employment or self- employment in the world of work.

- ***Private ITIs qualify as an educational institution*** if the education provided by these ITIs is approved as vocational educational course as defined above. servicesprovided by a private ITI only in respect of ***designated trades notified under Apprentices Act, 1961 are exempt*** from GST.
- Exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs.
- Private coaching centres or other unrecognized institutions, though self- styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

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- The following services provided by an educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt:
    - Lodging/boarding in hostels
    - Catering services / Mess facilities
    - Incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being.
- If catering is one of the service provided by educational institutions then it is exempt
- If catering service is provided by any person other than educational institutions, then GST would apply. However, when the service is provided to educational institution providing pre school education or education upto higher secondary school or equivalent then the said service would be exempt.
- where ***a course in a college leads to dual qualification only one of which is recognized by law***, Service in respect of each qualification would be assessed

separately.

- Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately.
- If an artificial bundle of service is created by clubbing two courses together,when only single fee is charged for both, only one of which leads to a qualification recognized by law it shall be treated as a mixed supply as per sec 8. The taxability will be determined by the supply which attracts highestrate of GST.

- **IIMs** - All the IIMs fall under purview of "educational institutions" as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

Courses offered by IIMs	Applicability of GST
Long duration programs (1 year ormore) for which they award diploma/ degree certificate duly recommendedby Board of Governors.	All services provided in such case is exempt from levy of GST
short duration/ short term programs (less than 1 year) for which they award participation certificate to the executives/ professionals. These participation certificates are not any qualification recognized by law.	GST is payable on the services provided in such case.

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- ***Fees charged from prospective employers*** - Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, whocome to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to tax.
- Maritime courses approved by DG Shipping - Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958. Thus ***the courses conducted by them are exempt.***

3.1.4 Services *provided to* an educational institution, by way of-

- Services provided to an educational institution which is engaged in providing services by way of pre-school education and education up to higher secondary school or equivalent, by way of –
  - transportation of students, faculty and staff;
  - catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
  - security or cleaning or house-keeping services performed in such educational institution; is ***exempt.***

Where output services areexempted, the educational institutions cannot avail credit of tax paid on the input services.

- Services provided to an educational institution by way of
  - services relating to admission to, or conduct of examination by, such institution;
  - supply of online educational journals or periodicals, ***is exempt, p***rovided such educational institution is not providing services by way of
    - ✓ pre-school education and education up to higher secondary school or equivalent; or
    - ✓ education as a part of an approved vocational education course

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- Regarding services provided to private ITIs, only services relating to admission to or conduct of examination received by a private ITI in respect of such designatedtrades are exempt. All other services provided to such institutions is liable to GST.

Exempt input services	
Educational institution providing pre-school education and education upto higher secondary school or equivalent	1. Transportation of students, faculty and staff.
	2. Catering, including any mid-day meals scheme sponsored by Government
	3. Security or cleaning house-keeping services performed in such educational institution;
	4. services relating to admission to, or conduct of examination by, such institution
Educational institutionproviding education as a part of curriculum for obtaining recognised qualification	1. Services relating to admission to or conduct of examination by, such institution.
	2. Supply of online educational journals orperiodical
Educational institutionproviding education as a part of approved vocational education course	1. Services relating to admission to, or Conduct of examination by, such institution

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Note: Services of affiliation provided by Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central or State Government, Union Territory, Local Authority, Governmental Authority or Government Entity is exempt.

Services provided by Government

Function entrusted to a municipality and Panchayat.

- Services by governmental authority by way of ***any activity in relation to any function entrusted to a***
  - ***municipality*** under article 243 W of the Constitution
  - ***Panchayat*** under article 243G of the Constitution.
  - is exempt.
- **Governmental authority**: means an authority or a board or any other body set up by an Act of Parliament or a state Legislature; or established by any Government with 90%, or more participation by way of equity or control, to carry out any function entrusted to a
  - Municipality under article 243W of the Constitution or
  - Panchayat under article 243G of the Constitution.
- Real Estate Regulatory Authority (RERA) is a Governmental authority, and the

statutory collections made by RERA shall be covered under the exemption

- Government entity includes a society, trust or corporation.
- ***Regulatory bodies/agencies***, for instance, Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India, ***do not fall under the definition of Government.***
- Clarification: GST is applicable on the services provided by facility management agency to Municipal Corporation of Delhi, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of Entry 3A

Services by Government which are taxable

- Services by the Central Government, State Government, Union territory or localauthority are exempt except the following services—
  1) Services by the Department of Posts and Ministry of Railways (Indian Railways)
  2) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  3) Transport of goods or passengers; or
  4) Any service, other than services covered under entries (1) to (3) above, provided to business entities

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- Services provided by Police/security agencies of Government to PSU/private business entities ***are not exempt*** from GST.
  - Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government.

Services by Government to Business entity

- Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 is exempt.
- However the following services ***are not included in the above entry***:
  1) Services by the Department of Posts and Ministry of Railways (Indian Railways)

2) Services in relation to an aircraft or a vessel, inside or outside the precinctsof a port or an airport;
3) Transport of goods or passengers; or
4) Services by way of renting of immovable property.

- Renting in relation to immovable property means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of thesaid immovable property and includes letting, leasing, licensing or other similararrangements in respect of immovable property.
- GST on services supplied by the Central Government, State Government, Union territory or local authority to a business entity [**whose turnover exceeds *such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act***] is **payable under reverse charge** by such business entity.

Services by Government to Government

- Services provided by the Central Government, State Government, Union territoryor local authority to another Central Government, State Government, Union territory or local authority is exempt.
- However the following services ***are not included in the above entry***.

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1) Services by the Department of Posts and Ministry of Railways (Indian Railways)
2) Services in relation to an aircraft or a vessel, inside or outside the precinctsof a port or an airport;
3) Transport of goods or passengers; or

Thus the above services are taxable.

Where the consideration does not exceed Rs.5,000.

- Services provided by Central Government, State Government, Union territory ora local authority where the consideration for such services does not exceed 5,000 is exempt.
- However the following services ***are not included in the above entry***.

4) Services by the Department of Posts and Ministry of Railways (Indian Railways)
5) Services in relation to an aircraft or a vessel, inside or outside the precinctsof a port or an airport;
6) Transport of goods or passengers; or

Thus, the above services are taxable irrespective of value.

- Further, in case where continuous supply of service is provided the exemption shall apply only where the consideration charged for such service does not exceed Rs. 5,000 in a Financial Year.

Supply of service for consideration in the form of grants

- Supply of service by a Government Entity
  - to Central Government, State Government, Union territory, local authorityor
  - any person specified by Central Government, State Government, Union territory or local authority.
  - against consideration received from Central Government, State Government, Union territory or local authority,
  - in the form of grants is exempt.

Services by an old age home

- Services by an old age home run by:
  - ✓ Central Government, State Government or
  - ✓ an entity registered under section 12AA of the Income-tax Act, 1961
  - to its residents (aged 60 years or more)
  - against consideration upto Rs.25,000 per month per member,
  - provided that the consideration charged is inclusive of charges for boarding,lodging and maintenance is exempt.

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Service provided by Indian railways to individuals by way of Sale of platform tickets, Facility of retiring rooms or waiting rooms, Cloak room services, Battery operated car services

Service provided by one division under Indian railways to another division under Indian railways

Note: Exemption is also provided in case of

1. Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways) to use the infrastructure built and owned by them during the concession period against consideration
2. Services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration.

Services to Public Sector Undertakings (PSUs)

- Services supplied by Central Government, State Government, Union territory
  - to their undertakings or

- Public Sector Undertakings(PSUs)
- by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions is exempt.

Services provided by way of registration etc.

- Services provided by the Central Government, State Government, Union territory or local authority by way of-
  - registration required under any law for the time being in force;
  - testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required underany law for the time being in force is exempt.

Issuance of passport, visa, driving license, & certificates

- Services provided by the Central Government, State Government, Union territoryor local authority by way of issuance of
  - passport,
  - visa,
  - driving license,
  - birth certificate or death certificate

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Services by way of tolerating non- performance of a contract

- Services provided by the Central Government, State Government, Union territoryor local authority by way of
  - tolerating non- performance of a contract
  - for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract is exempt.
- Tolerating non- performance of a contract is an activity or transaction which is treated as a supply of service as per Schedule II of CGST Act and the person is deemed to have received the consideration in the form of fines or penalty and is,accordingly, required to pay tax on such amount.
- However, in case of supplies made to Government, services [provided by Government] by way of tolerating the non-performance of contract by the supplier of service is covered under the exemption.

Services by way of assignment of right to use natural resources

- Services provided by the Central Government, State Government, Union territory or local authority by wayof

- assignment of right to use natural resources
- to an individual farmer for
  - ✓ cultivation of plants and
  - ✓ rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products is exempt.

Services by way of deputing officers

- Services provided by the Central Government, State Government, Union territoryby way of
  - deputing officers after office hours or on holidays
  - for inspection or container stuffing or such other duties
  - in relation to import export cargo
  - on payment of Merchant Overtime charges is exempt.

Services supplied by a State Government

- Services supplied by a State Government
  - to Excess Royalty Collection Contractor (ERCC)
  - by way of assigning the right to collect royalty
  - on behalf of the State Government on the mineral dispatched by the mining lease holders is exempt.

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- Mining lease holder means a person who has been granted mining lease, quarry lease or license or other mineral concession.
- At the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of GST deposited by mining lease holders on royalty is more than the GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty.
- And where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as isequal to the amount of GST paid by the mining lease holders and the ERCC shallpay the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty.

Services by way of sponsorship of sporting events

- Services by way of sponsorship of sporting events is exempt when organised -
  - (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
  - (b) by Association of Indian Universities, Inter-University Sports Board,

School Games Federation of India, All India Sports Council for the Deaf, ParalympicCommittee of India or Special Olympics Bharat;

(c) by the Central Civil Services Cultural and Sports Board;

(d) as part of national games, by the Indian Olympic Association; or

(e) under the Panchayat Yuva Kreeda Aur Khel Abhiyaan Scheme.

Skill Development services

3.1.5 National Skill Development Corporation

- Any services provided by, _
  - a) the National Skill Development Corporation set up by the Government of India;
  - b) the National Council for Vocational Education and training
  - c) an awarding body recognised by the National Council for Vocational Education and Training
  - d) an assessment agency recognised by the National Council for Vocational Education and Training
  - e) a Training Body accredited with an Awarding Body that is recognised by the National Council for Vocational Education and Training
  - f) a training partner approved by the National Skill Development Corporation in relation to

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1. National Skill Development Program or any other Scheme implemented by National Skill Development Corporation (or)
2. a vocational Skill Development Course under the National Skill Certification and Monetary Reward Scheme (or)
3. any National Skill qualification framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package.

Skill Development Initiative Scheme.

- Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme is exempt.

Deen Dayal Upadhyaya Grameen Kaushalya Yojana

- Services provided by training providers (Project implementation agencies)
  - under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY)
  - implemented by the Ministry of Rural Development, Government of India
  - by way of offering skill or vocational training courses

- certified by the National Council for Vocational Training is exempt.

Service by way of right to admission to various events

Exempt irrespective of admissions charges

- Services by way of admission to
  1) A museum, national park, wildlife sanctuary, tiger reserve or zoo.
  2) Protected monument so declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958 or any of the State Acts, for the time being in force.

Exempt when admission charges are not more than Rs. 500

- Services by way of admission to
  1. Circus, dance, or theatrical performance including drama or ballet;
  2. Award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
  3. Recognised sporting event;
  4. Planetarium,

With regard to the events or places as referred above, exemption is applicable only when the consideration for right to admission is not more than Rs.500 per person.

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- Recognised sporting event means any sporting event organised by a recognised sports body where the participating team or individual represent any district, state, zone or country.

Recognised sports body includes means:

- National sports federation, or its affiliated federations.
- Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat
- Central Civil Services Cultural and Sports Board
- Indian Olympic Association
- Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.
- Sports Authority of India
- International Olympic Association or a federation recognised by the International Olympic Association.
- A federation or a body which regulates a sport at international level and itsaffiliated federations or bodies regulating a sport in India.

Services by an unincorporated body or a non- profit entity

Services to its own members

- Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –
  - as a trade union
  - for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or
  - up to an amount of Rs.7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex is exempt.
- A Co-operative Housing Society is a collective body of persons, who stay in a residential society and as a collective body, they supply certain services to its members, like collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.
- Service provided by a Housing Society [Resident Welfare Association (RWA)] to its members is treated as service provided by one person to another. Thus it wouldattract the levy of GST and the housing society would be required to register (if its aggregate turnover is above the applicable threshold limit for registration) andcomply with the GST Law, unless specifically exempted.
- An RWA is not required to obtain registration even though the amount of maintenance charges exceeds Rs.7500/- per month per member but the aggregate turnover of the RWA in a financial year does not exceed the thresholdlimit for registration.

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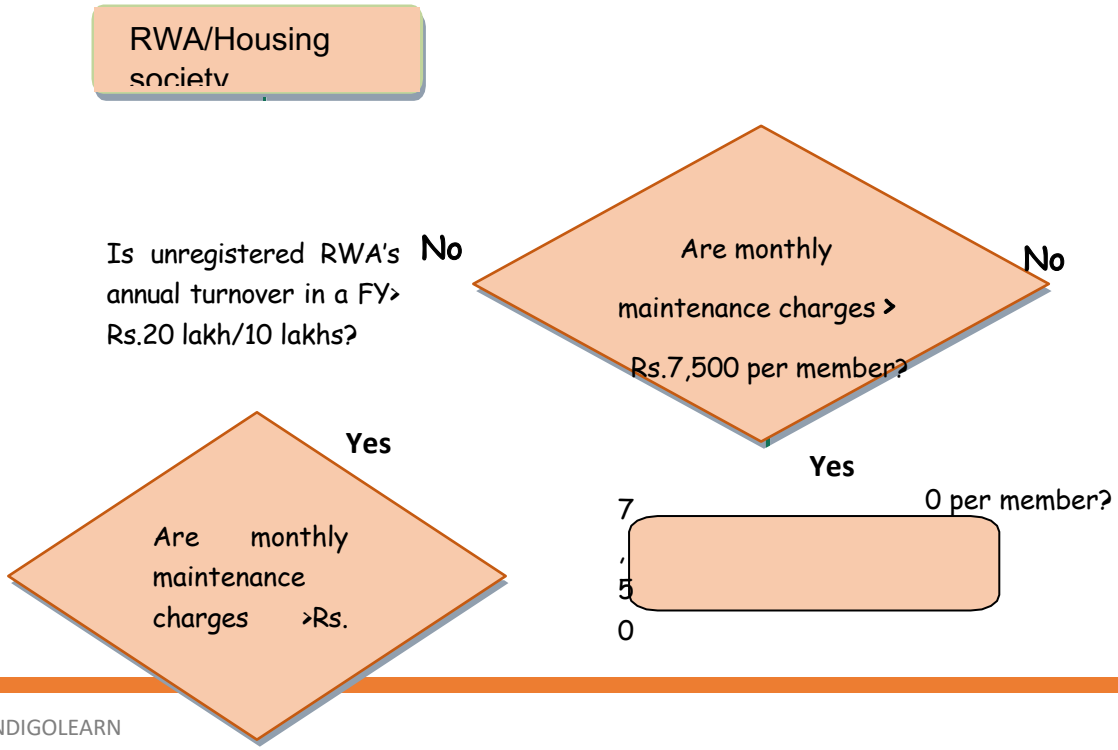

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Tax payable

- It is important to note that RWA is entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services, used by it for making supplies to its members and use suchITC for discharge of GST liability on such supplies where the amount charged forsuch supplies is more than Rs.7,500 per month per member.
- A person who owns 2 or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. Consequently, the ceiling of Rs.7500/- per month per member shall be applied separately for each residential apartment owned by him.

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Services related to specified activities

- Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,-
  - activities relating to the welfare of industrial or agricultural labour or farmers; or
  - promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,

  to its own members against consideration in the form of membership fee upto an amount of Rs.1000/- per member per year.

Leasing services

3.1.6 Services by way of granting of long term lease of 30 years, or more

- Upfront amount (called as premium, salami, cost, price, development charges or by any other name)
  - payable in respect of service by way of granting of ***long term lease of 30 years, or more)***
  - of industrial plots or plots for development of infrastructure for financial business,
  - provided by the State Government Industrial Development Corporations orUndertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory
  - to the industrial units or the developers
  - in any industrial or financial business area is exempt.
- Aforesaid exemption is admissible irrespective of whether such upfront amount is payable/paid in one/more instalments, provided the amount is determined upfront.
- ***Conditions for exemption***
  - The leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial businessarea.
  - State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard.
  - In case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee/ buyer/ owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged

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for the long-term lease of the plots but for the exemption contained herein,along with the applicable interest and penalty.

- The lease agreement entered into by the respective parties for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lesseesubject to above condition and that the parties to the said agreements undertake to comply with the same

Legal services

Services provided by	Legal services is exempt if provided to
An arbitral tribunal	1) Any person other than a business entity; or 2) Business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017; 3) The Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
A partnership firm of advocates or an individual as an advocate other than a senior advocate,	
A senior advocate by way of legal services	
A partnership firm of advocates or anindividual as an advocate other than a senior advocate,	An advocate or partnership firm of advocates providing legal services

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- ***Legal service:*** means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- ***Senior advocate:*** An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their

practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

- Thus, legal services provided to a business entity with an aggregate turnover exceeding ***such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017*** are liable to GST. Further, tax is payable by the business entity on such services under reverse charge.

Life insurance business services

- Services of life insurance business provided by way of annuity under the ***National Pension System*** regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 is exempt.
- Services of life insurance business provided or agreed to be provided by the ***Army, Naval and Air Force Group Insurance Funds*** to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government is exempt.
- Services of life insurance provided or agreed to be provided by the ***Naval Group Insurance Fund*** to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government is exempt.
- Services of life insurance provided/agreed to be provided by the ***Central Armed Police Forces*** (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.
- Services of Life and Health insurance business provided by an insurer to the insured, where the insured is not a group is exempt from GST
- Services of life insurance business provided under following schemes are exempt -
  1) Janashree Bima Yojana;
  2) Aam Aadmi Bima Yojana;
  3) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of Rs.2,00,000;
  4) Varishtha Pension Bima Yojana;
  5) Pradhan Mantri Jeevan Jyoti Bima Yojana;
  6) Pradhan Mantri Jan Dhan Yogana;
  7) Pradhan Mantri Vaya Vandan Yojana.

General insurance business services

- Services of general insurance business provided under following schemes –
  1) Hut Insurance Scheme;

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2) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna[28];
3) Scheme for Insurance of Tribals;

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4) Janata Personal Accident Policy and Gramin Accident Policy;
5) Group Personal Accident Policy for Self-Employed Women;
6) Agricultural Pumpset and Failed Well Insurance;
7) Premia collected on export credit insurance;
8) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture;
9) Jan Arogya Bima Policy;
10) Pradhan Mantri Fasal Bima Yojana (PMFBY);
11) Pilot Scheme on Seed Crop Insurance;
12) Central Sector Scheme on Cattle Insurance;
13) Universal Health Insurance Scheme;
14) Rashtriya Swasthya Bima Yojana;
15) Coconut Palm Insurance Scheme;
16) Pradhan Mantri Suraksha BimaYojna;
17) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
18) Bangla Shasya Bima – Insurance to protect the interest of farmers (West Bengal government)

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Services by way of reinsurance/ retrocession

- Services by way of reinsurance of the insurance schemes specified under both lifeinsurances and general insurance mentioned above are exempt.

Services provided by specified bodies

- Services by the ***Employees' State Insurance Corporation*** to persons governed under the Employees' State Insurance Act, 1948 are exempt.
- Services provided by the ***Employees Provident Fund Organisation*** to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 are exempt.
- Services by ***Coal Mines Provident Fund Organisation*** to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 areexempt.
- Services by ***National Pension System*** (NPS) Trust to its members against consideration in the form of administrative fee are exempt.

Pension schemes

- Services by way of collection of contribution under the Atal Pension Yojana isexempt.
- Services by way of collection of contribution under any pension scheme of the State Governments is exempt.

Performance by an artist

- Services by an artist by way of a performance in folk or classical art forms of-
  - music, or
  - dance, or
  - theatre,

  if the ***consideration*** charged for such performance is ***not more than Rs.1,50,000***

  are exempt from GST.
- Thus, if consideration from such activities exceeds Rs.1,50,000, entire consideration is subject to GST.
- Further, all other activities by an artist in other art forms e.g. western music or dance, modern theatres, performance of actors in films or television serials wouldbe taxable.
- Similarly activities of artists in still art forms e.g. painting, sculpture making etc. are taxable.
- However, the exemption shall not apply to service provided by such artist as a brand ambassador.
- ***Brand ambassador:*** means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

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Business facilitator/correspondent

- Services by the following persons in respective capacities are exempt–
  1) Business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
  2) Any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (1); or
  3) Business facilitator or a business correspondent to an insurance company in a rural area.
- BCs/BFs help villagers to open bank accounts and provide other banking services to them. They act as an intermediary between the bank and its customers. Banks,in turn, pay commission/ fee to the BCs/BFs.
- All agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the

BF/BC.

- Hence, banking company is the service provider to the ultimate customer in the BF model/BC model. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF/BC.
- It is important to note that for the purpose of availing exemption from GST underthis Entry, services provided by a BF/BC to a banking company in their respectiveindividual capacities should be with respect to accounts in a branch located in the ***rural area*** of the banking company.
- The banking company is the person liable to pay GST under reverse charge in respect of commission/fees charged for the taxable services provided by BF toa banking company in respect of services other than those mentioned above. Similarly, GST on taxable services provided by an agent of BC to BC is payable under reverse charge by the BC other than those covered under exemption.

Services provided to Government

- Pure services (excluding works contract service or other composite supplies involving supply of any goods) or
- Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply
  - provided to the Central Government, State Government or Union territory or local authority
  - by way of any activity:
    - ✓ in relation to any function entrusted to a Panchayat under article 243G of the Constitution or
    - ✓ in relation to any function entrusted to a Municipality under article 243W of the Constitution.
- Supply of '***pure services***' means supply of services without involving any supply of goods. Further, ***'composite supply of goods and services'*** to Government is exempted in which value of supply of goods constitutes not more than 25% of value of such composite supply.
- Service provided by ***fair price shops*** to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.
- Services provided to the Central Government, State Government, Union territoryunder ***any insurance scheme*** for which total premium is paid by the Central Government, State Government, Union territory is exempt.
- Services provided to the Central Government, State Government, Union territory administration under ***any training programme*** **for which 75% or more of the total expenditure** is borne by the Central Government, State

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Government, Union territory administration is exempt.

Other exempt services

- Services by way of **granting National Permit to a goods carriage** to operate through-out India/ contiguous States.
- Services by way of ***transfer of a going concern***, as a whole or an independent part thereof is exempt.

Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service.

- Services by way of ***renting of residential dwelling*** for use as residence is exempt. This entry shall also cover renting of residential dwelling to a registered person provided he is a proprietor and has rent the property in his personal capacity for use as his own residence and renting is on his own account and not that of the proprietorship concern.
  - This point shall not apply to accommodation services for students in student residences and also to accommodation services provided by Hostels, camps, paying guest accommodation and like

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- Supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days.
- Service by way of access to a road or a bridge on payment of ***toll charges*** is exempt.
- ***Transmission/distribution of electricity by an electricity transmission*** / distribution utility is exempt.
  - However, in this regard CBIC has clarified that the other services provided by DISCOMS (distribution companies) to consumer against charges are ***liable to GST*** such as,-
    1. Application fee for releasing connection of electricity;
    2. Rental Charges against metering equipment;
    3. Testing fee for meters/transformers, capacitors etc.;
    4. Labour charges from customers for shifting of meters or shifting of service lines;
    5. charges for duplicate bill
- Supply of services by way of providing metering equipment on rent, testing for meters/ transformers/ capacitors etc, releasing electricity connection, shifting of meters or service lines, which are ancillary or incidental to supply of transmission ~~and~~ **or** distribution of electricity provided by electricity

transmission ~~and~~ **or** distribution utilities to their consumers.

- Services provided by an ***incubatee up to a total turnover of Rs.50 lakh*** in a financial year is exempt subject to the following conditions, namely:-
  - The total turnover had not exceeded Rs.50 lakh during the preceding financial year; and
  - A period of 3 years has not elapsed from the date of entering into anagreement as an incubatee.

  Incubatee: means an entrepreneur located within the premises of a Technology Business Incubator (TBI)/ Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Governmentof India (NSTEDB) and who has entered into an agreement with the TBI/STEP to enable himself to develop and produce hi-tech and innovative products.
- Research and development services against consideration received in the form of grants supplied by a Government Entity or a research association, university or college or other institution notified under Section 35 of Income Tax Act {It must be notified at the time of supply of service}
- Taxable services, provided or to be provided, by a TBI/STEP recognised by NSTEDBor ***bio- incubators recognised by the Biotechnology Industry Research Assistance Council***, under the Department of Biotechnology, Government of India (BIRAC) is exempt.

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- Services by way of ***collecting or providing news*** by
  - an independent journalist,
  - Press Trust of India or
  - United News of India is exempt.
- Services of ***public libraries*** by way of lending of books, publications or any other knowledge-enhancing content or material is exempt.
- Services by an organiser to any person in respect of a ***business exhibition held outside India*** is exempt.

- Services by way ***of pre-conditioning, pre- cooling, ripening, waxing, retail packing, labelling*** of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables is exempt.
- Services provided by the ***National Centre for Cold Chain Development*** under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of ***cold chain knowledge dissemination*** is exempt.
- Services by a ***foreign diplomatic mission*** located in India is exempt.
- Services by way of ***providing information under the RTI Act*** (Right to Information Act, 2005) is exempt.

- Services provided ***to a recognised sports body*** is exempt when provided by-
    1. An individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body;
    2. Another recognised sports body.
  - However, services by individuals such as *selectors, commentators, curators, technical experts are taxable.* The service of a player to a franchisee which isnot a recognized sports body is also taxable.
- Services by way ***of public conveniences*** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets is exempt.
- Services provided by a ***banking company to Basic Saving Bank Deposit (BSBD) account holders*** under Pradhan Mantri Jan Dhan Yojana (PMJDY) is exempt.
- Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of ***rehabilitation, therapy or counselling*** and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centres established by Central Government, State Government or Union territory or an entity registeredunder section 12AA or 12AB of the Income-tax Act, 1961 is exempt.

- Services by way of giving on ***hire motor vehicle*** is exempt if provided to –

1. A state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers.

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   This exemption is applicable to services provided to State Transport Undertaking and not to other departments of Government or local authority.

   Generally, such State Transport Undertakings/ Corporations are establishedwith a view to providing public transport facility to the commuters. If transport undertakings hire the buses on lease basis from private persons on payment of consideration, the services by payment of tax. However, supplies of motor vehicles to Government Departments other than the STUsare taxable.
2. A local authority, an Electrically operated vehicle (EOV) meant to carry morethan 12 passengers;

   EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to suchroad vehicle.
3. A goods transport agency, a means of transportation of goods
4. A person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

- Satellite launch services is exempt.
- Intra-state supply of services by way of
  - grant of license or lease to explore or mine petroleum crude or natural gas or both
  - for so much of the central tax as is leviable on the consideration
- paid to central government in the form of central government's share of ***profit***
- as defined in the contract entered into by the central government in this behalfis exempt.

New exemptions:

1. Service by the Department of Posts by way of Post Card, inland letter, book post and ordinary post (envelopes weighing less than 10 gms)

2. Service provided to Governmental Authority by way of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation.

3. Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India: Provided that value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less.

   Provided further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

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4. Import of services by an establishment of a foreign airline company in India from a related person or from any of its other foreign establishments, provided there is no consideration involved.

   Conditions for Exemption to Apply:
   Condition (a): The Indian establishment of the foreign airline company must pay GST at applicable rates for the transport of goods or passengers, as applicable, which means that regular taxable supplies like air travel services or cargo services continue to be subject to GST.

Condition (b): The Ministry of Civil Aviation must certify that the Indian establishment of the foreign airline is indeed port of on airline company designated by the foreign government under a bilateral air services agreement with India. This confirms the reciprocal nature of the agreement between India and the foreign country.

Condition (c): The Ministry of Civil Aviation must also certify that the foreign government does not levy similar taxes on Indian airlines in its jurisdiction for the same services. This ensures reciprocity, where foreign airlines in India enjoy tax relief if Indian airlines are exempt from similar levies abroad.

5. Services of insurance provided by the Motor Vehicle Accident Fund, constituted under section 164B of the Motor Vehicles Act, 1988, against contributions made by insurers out of the premiums collected for third party insurance of motor vehicles.

   Note: Insurer has the same meaning as assigned to it in 2(9) of Insurance Act, 1938

6. Clarification in respect of exemption to payment aggregators in relation to settlement of an amount, up to 2,000 in a single transaction, transacted through credit card, debit card, charge card or other payment card services. It has been clarified that PAs fall within the definition of 'acquiring bank' given in the Explanation to the said exemption entry as they make the payment to the merchants who accept credit cards, debit cards, charge cards or other payment card services. Consequently, exemption under Entry 34 is available to RBI regulated Payment Aggregators (PAs) in relation to settlement of an amount, up to ` 2,000 in a single transaction, transacted through credit card, debit card, charge card or other payment card services. It is also clarified that this exemption is limited to payment settlement function only, which involves handling of money, and does not cover Payment Gateway (PG) services

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ILLUSTRATIONS

Illustration 1

Determine the taxable value of supply under GST law with respect to each of thefollowing independent services provided by registered persons:

Particulars	Gross Amount(Rs.)
Fees charged for Yoga camp conducted by a charitable trust registered under Section 12AA of the Income-tax Act, 1961	50,000
Amount charged by business correspondence from banking company for the services provided to the rural branch of a bankwith respect to Savings Bank Account	1,00,000
Amount charged by cord blood bank for preservation of stem cells	5,00,000

Amount charged for service provided by commentator to a recognized sports body	5,20,000

Illustration 2

Examine whether GST is exempted on the following independent supplies of services:

(i) Service provided by a private transport operator to Scholar Boys Higher Secondary School in relation to transportation of students to and from theschool.

(ii) Services provided by way of vehicle parking to general public in a shopping mall.

Illustration 3

Discuss whether GST is payable in respect of transportation services provided by RaghavGoods Transport Agency in each of the following independent cases:

Customer	Nature of service provided	Amount charged (Rs.)
A	Transportation of Milk	20,000
B	Transportation of books on a consignment transported in a single goods carriage	3,000
C	Transportation of chairs for a single consignee in the goods carriage	600

Illustration 4

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Examine whether GST is payable in the following independent supply of services:

i. Indiana engineering college, a recognised educational institution, has conducted an entrance text examination for various courses run by it and charged entrance fee from the applicants.

ii. Ramfal Lalaji, an agriculturist, has stored sugarcane in a warehouse. He has taken fumigation services in the said warehouse from Gupta Pest Control Co. for which, he paid consideration of Rs. 6,000.

Illustration 5

Examine whether supply of food and drink in the following independent cases is exemptfrom GST:

(i) "Smart kids" is a play school located in Delhi. It has outsourced the catering services for supply of food and drink in the canteen of play school to BTV Caterers, Delhi for a consideration of Rs. 8 lakhs per annum.

(ii) Wellness Hospital, a clinical establishment located in Tirupati, is specialized in diabetic treatment. The hospital has its own canteen-Tasty foods. The canteen serves thefood and drink to the in-patients as advised by the doctors/ nutritionists of the hospital.

Apart from this, others (who are not admitted) or attendants or visitors of the in- patients also take food and drink from the canteen.

Illustration 6

Examine whether GST is payable in the following independent supply of services:

i. Teja & Co, a tour operator, provides services to a foreign tourist for tour conducted in Jammu & Kashmir and received a sum of Rs. 3,00,000

ii. Ms. Poorva acts as a Team Manager for Indian Sports League (ISL), a recognised sports body, for a Tennis tournament organised by Multi brand retail company and received a remuneration of Rs. 2,00,000.

Illustration 7

Decide with reason whether the following independent services are exempt under CGST act, 2017:

i. M/s Fast Trans, a goods transport agency, transported relief materials meant for victims of Kerala flood being a natural disaster, by road from Delhi to Ernakulam for a Limited Co.

ii. Kenya enterprise, an event organizer, provided services to Breathing Wall Ltd. by way of organizing a business exhibition at Pragati Maidan in New Delhi as part of Make in India Initiative.

Illustration 8

Decide with reason whether the following independent services are exempt under CGST act, 2017:

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i. Gokul Residence Welfare Association received Rs. 9,000 per month as contribution from each member for sourcing of goods and services from third person for common use of its members.

ii. Mr. Vikalp, a performing artist, has received Rs.1,58,000 from performance of classical dance and Rs. 90,000 from acting in TV serial during the month of June,2018.

Illustration 9

JP Charitable institution, an entity registered under Section 12AA of Income tax Act, 1961 and registered in GS, has furnished you the following details with respect to activities undertaken by it during the month of January,

You are required to compute its taxable value of GST from the information given below, assuming that the rate of GST is 18%.

Brief reason should be part of your answer.

Particulars	Amount excl. GST (Rs.)
Membership fee received from members	1,00,000
Amount received from advancement of educational programs relating to abandoned or orphaned or homeless children	4,00,000

Amount received for renting of commercial property owned by Trust	5,00,000
Amount received for counselling of thermally ill people	3,50,000
Fees charged for Yoga camp conducted by trust	2,00,000
Amount received relating to preservation of forest & wildlife	6,00,000

Illustration 10

Decide with reason whether the following independent supplies are exempt under CGSTact, 2017:

(i) Amith, runs a fair price shop, and earns Rs.30,000 as consideration fromgovernment for sale of food grains.

(ii) Determine taxability:

a. Mr. X, a resident has given a part of his residence by way of renting to Mr. Y for residential purpose.

b. What would be your answer if house is given for commercial purpose?

(iii) Mr. A, a priest charged, Rs. 51,000 for services provided to B for conduct of his marriage ceremony.

(iv) Determine taxability:

a. Tirupati temple provides accommodation service wherein the room rent is Rs.900 per day.

b. What would be your answer if the room rent is Rs. 1,100 per day?

(v) Mr. Akash, travel by air from Hyderabad to Sikkim and Airlines Co. charged Rs. 10,000. Will GST apply on Rs. 10,000?

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(vi) Service by way of goods being transported through rail or vessel

Relief materials to flood affected areas.
Newspapers or magazines registered with the registrar of Newspapers.
Milk
Defence or Military equipment
Chemical fertilizers
Cotton ginned or bailed

(vii) Mr. Mohan, an independent journalist, working for Press Trust of India. Andprovide services by way of collecting or providing News.

(viii) A News reporter attends a press conference of Ministers or a visit to Police station or a Crime scene for collection of News to be delivered to various Newspapers or TV Channels.

(ix) Mr. Lal applied for a passport and paid a fee of Rs 1,500 at the passport office. WillGST apply on Rs. 1,500?

(x) PVR Cinema's charges Rs. 200 as application charges for exhibition of a film.

Illustration 11

Sarva Sugam Charitable Trust, a trust registered under section 12AB of the Income – Tax Act, 1961, provides the following information relating to supply of its services for the month of August:

Particulars	Amount
Renting of residential dwelling for use as a residence to an unregistered person	18,00,000
Renting of rooms for devotees (Charges per day Rs. 750)	6,00,000
Renting of Kalyan mandapam (Charges per day Rs. 15,000)	12,00,000
Renting of halls and open space (Charges per day Rs. 7,500)	10,75,000
Renting of shops for business (Charges per month Rs. 9,500)	4,75,000
Renting of shops for business (Charges per month Rs. 12,000)	7,50,000

Compute the GST liability of Sarva Sugam Charitable Trust for the month of August assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18%.

Note: The rooms/Kalyana mandapam/halls/open space/shops owned by the trust are located within the precincts of a religious place, meant for general public, owned by the trust.

Illustration 12

Brahmi Foundation, Noida is registered as a trust under section 12AB of the Income-tax Act, 1961. With effect from 01.08.2017, it intends to offer its guest houses to the pilgrims visiting the Noida shrine at Rs. 900 per day and their marriage hall at Rs. 12,000 per day. They want to know whether these will attract GST liability. Advise them suitably.

Illustration 13

Sri Durga Charitable Trust registered under section 12AB of the Income Tax Act and also registered person under GST Law. Provided the following services in the month of October.

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1. Services by way of training or coaching in recreational activities relating to sports 4,00,000/-
2. Fee from organizing yoga camps for Rs. 5,00,500/-
3. Organizes fitness camps in reiki, aerobics, etc., and receive donation from participants Rs. 2,25,000/-
4. Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material for Rs. 20,000

Assume applicable rate of GST for taxable supplies @18%.

Illustration 14

JP Charitable institution, an entity registered under Section 12AA or 12AB of Income Tax Act, 1961 and registered in GST, has furnished you the following details with respect to the activities undertaken by it during the month of January, 20XX. You are required to compute its Taxable Value of GST from the information given below; assuming the rate of GST is 18%.

Brief reasoning should be part of your answer.

Particulars	Amount in Rs. (Excluding GST)
Membership fees received from members	10,00,000

Amount received for advancement of educational programs relating to abandoned or orphaned or homeless children	4,00,000
Amount received for renting of commercial property owned by Trust	5,00,000
Amount received for counselling of terminally ill person/ mentally disabled persons	3,50,000
Fees charged for Yoga Camp conducted by Trust	2,00,000
Amount received relating to preservation of Forest and Wildlife	6,00,000
Payment made for the services received from a service provider located in US for the purpose of providing Charitable activities	5,50,000

Illustration 15

Mr. Nagarjun, a registered supplier of Chennai, has received the Following amounts in respect of the activities undertaken by him during the month of September:

S. No.	Particulars	Amount {Rs)
(i)	Amount charged for service provided to recognized sports body as selector of national team.	50,000
(ii)	Commission received as an insurance agent from insurance company	65,000
(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts.	15,000
(iv)	Service to Foreign diplomatic mission located in India.	28,000
(v)	Funeral services.	30,000

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e received the services from unregistered goods transport agency for his business activities and paid freight of Rs. 45,000 (his aggregate turnover of previous year was Rs. 9, 90,000).

Note: All the transactions stated above are intra-State transactions and also are exclusive of GST.

You are required to calculate gross GST liability (ignoring ITC provisions) of Mr. Nagarjun for the month of September assuming that the rate of GST, wherever applicable, is 18% except the GTA services where the rate of GST is 5% (GTA not opted for FCM). Working notes should Form part of your answer.

Illustration 16

Swasthya Nursing Home, a clinical establishment, offers the following services:

i. Rooms provided to the in-patients where the room charges per day are Rs. 6,500.

ii. Plastic surgery conducted to repair left lip of a new born baby.

iii. Air ambulance· services to transport critically ill patients from distant locations to Swasthya Nursing Home.

iv. Supply of food to the in-patients as per the advice of the doctor/nutritionist from its restaurant Annapurna Bhawan - located in the basement of Swasthya Nursing Home. The food is prepared by its employees and nothing is outsourced to any third-party vendors.

v. Homeopathic medical treatment.

vi. Swasthya Nursing Home. also operates a cord blood bank which provides services in relation to preservation of stem cells.

Determine whether GST is payable in respect of each of the above services provided by Swasthya Nursing Home.

Illustration 17

Shiva Medical Centre, a Multi-speciality hospital, is a registered supplier in Mumbai. It hires senior doctors and consultants independently, without entering into any employer-employee agreement with them. These doctors and consultants provide consultancy to the in-patients - patients who are admitted to the hospital for treatment - without there being any contract with such patients. In return, they are paid the consultancy charges by Shiva Medical Centre.

However, money actually charged by Shiva Medical Centre from in-patients is higher than consultancy charges paid to the hired doctors and consultants. The difference amount retained by the hospital, i.e. retention money, includes charges for providing ancillary services

The Department took a stand that senior doctors and consultants are providing services to Shiva Medical Centre and not to patients. Hence, their services are not health care services and must be subject to GST. Further, GST is applicable on the retention money kept by Shiva Medical Centre.

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You are required to examine whether the stand taken by the Department is correct.

5. TIME OF SUPPLY

Contents

- Time of supply of goods [12(1)] and Services [13(1)]
- Time of supply under forward charge [12(2)] & [13(2)]
- Time of supply under reverse charge [12(3)] & [13(3)]
- Time of supply of vouchers exchangeable for goods [12(4)] & [13(4)]
- Time of supply in residual cases [12(5)] & [13(5)]
- Addition in value by interest, late fees etc. [12(6)] & [13(6)]
- Time of Supply in case of change in rate of tax [Section 14]

1. INTRODUCTION

- Provisions relating to 'time of supply' provide answers to questions that arise with respect to the time when the liability to pay CGST and SGST/UTGST (intra- State supply) and IGST (inter-State supply) arises.

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- Though the liability to pay tax arises at the time of supply, the same can be paid to the Government by the due date prescribed with reference to the said 'time of supply'. For instance, if time of supply of a given supply is 25th May, the tax leviable thereon would be payable latest by 20th June, which is the due date prescribed in the CGST Act.

- The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13.

1.1. Definitions

- Invoice or tax invoice
  Invoice means the tax invoice referred to in section 31 [Section 2(66)].
- Recipient of supply of goods or services or both, means—
  - where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
  - where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
  - where no consideration is payable for the supply of a service, the person to whom the service is rendered,

- Supplier
  Person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].
- Voucher
  An instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].

2. TIME OF SUPPLY OF GOODS

- Section 12(1) – Liability to pay tax on goods shall arise at the time of supply as determined in terms of the provisions of this section.

2.1 – Time of Supply under Forward Charge – Section 12(2)

- Sec 12(2)(a) – The time of supply of goods that are taxable under forward charge, is the earlier of the following two dates:
  - Date of issue of invoice by the supplier or
  - Last date on which the invoice ought to have been issued in terms of section 31
- Section 148 - In exercise of the powers conferred by section 148, the Central Government, on the recommendation of the GST Council, has issued Notification No. 66/2017 CT dated 15.11.2017 to specify that a registered person ***(excluding composition supplier)*** should ***pay GST*** on the outward supply of goods at the time of supply ***as specified in section 12(2)(a).***

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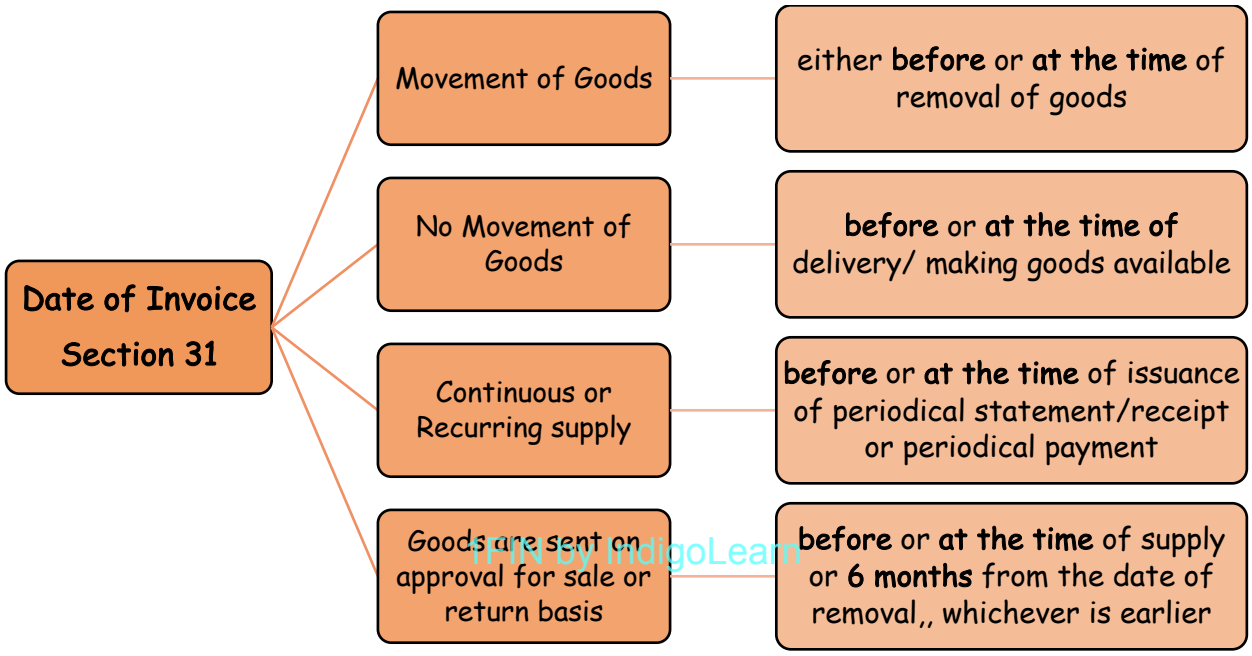
- The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods and not for supply of services.
- All taxpayers under forward charge (except composition suppliers) are ***not required to pay GST at the time of receipt of advance in relation to supply of goods***.
- The entire GST shall be payable only when the invoice for the supply of such goods is issued or ought to have been issued.
- "Date of receipt of payment" in the above situation refers to
  - the date on which the payment is recorded in the books of account of the entity (supplier of goods) that receives the payment, or
  - the date on which the payment is credited to the entity's bank account, whichever is earlier.

- <u>Time limit for issuance of invoice for supply of goods under section 31 -</u>

- As per section 31(1), the invoice needs to be issued either ***before*** or ***at the time of removal of goods*** (where supply involves movement of goods) or delivery of goods/ making goods available to recipient (in any other case).
- In case of continuous supply of goods, the invoice should be issued ***before or at the time of issuance of periodical statement/receipt of periodical payment*** [Section 31(4)]
- In case of goods sent or taken on approval for sale or return, invoice should be issued ***before or at the time of supply*** or ***6 months from the date of removal***, whichever is earlier [Section 31(7)]



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Continuous supply of Goods [Section 2(32) *– means*

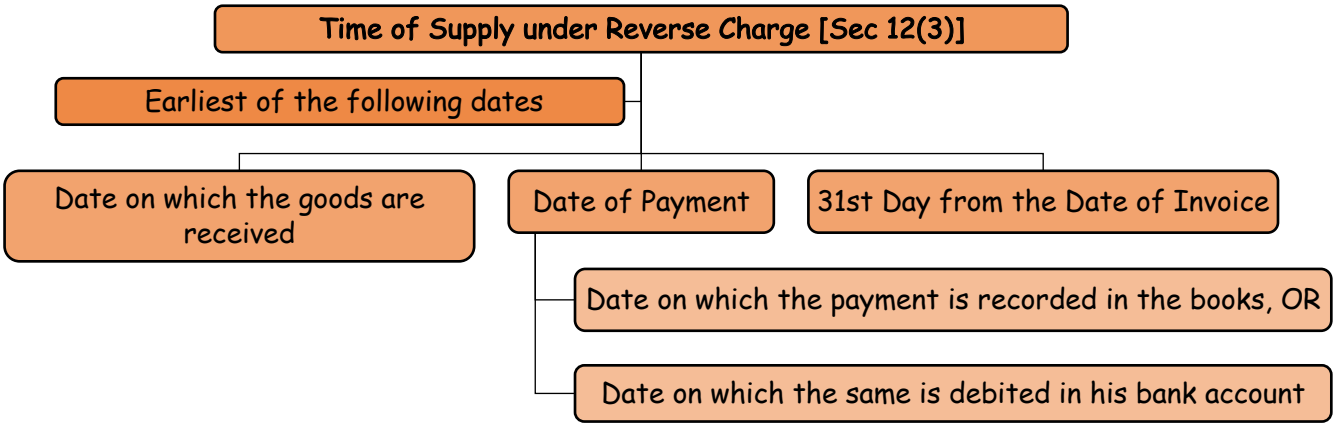
- a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis
- under a contract
- whether or not by means of a wire, cable, pipeline or other conduit, and
- for which the supplier invoices the recipient on a regular or periodic basis and
- includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify

2.2 – Time of supply under Reverse Charge – Section 12(3)

- The time of supply of goods on which GST is payable on reverse charge basis under sub-sections (3) and (4) of section 9 of CGST Act will be the earliest of the following dates:
  - Date on which the goods are received, or
  - Date on which payment is recorded in the books of account of the recipient, or the date on which the same is debited in his bank account, whichever is earlier, or

- Date immediately following 30 days from the date of issue of invoice (or document by some other name in lieu of invoice) by the supplier.

- If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of goods in the books of account of the recipient of supply.
- ***The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment).***



~~2.3 – Time of Supply of Vouchers exchangeable for Goods – Section 12(4)~~

- ~~Vouchers are instruments that can be exchanged as payment for goods or services of the designated value.~~
- ~~As per the definition, they are instruments, that certain persons (potential suppliers) are obliged to accept as consideration, part or full, for goods and/or services. The instrument or its related documentation sets out the terms and conditions of use, the goods and/or services covered, and the identity of the potential suppliers of such goods and/or services.~~
- ~~As per section 12(4), the time of supply of vouchers exchangeable for goods is~~
  - ~~Date of issue of the voucher, if the supply that it covers is identifiable at that point, or~~
  - ~~Date of redemption of the voucher in other cases~~

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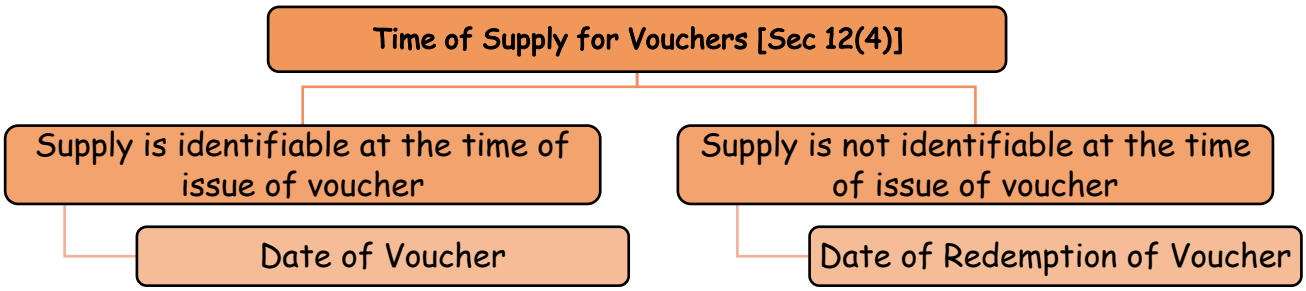
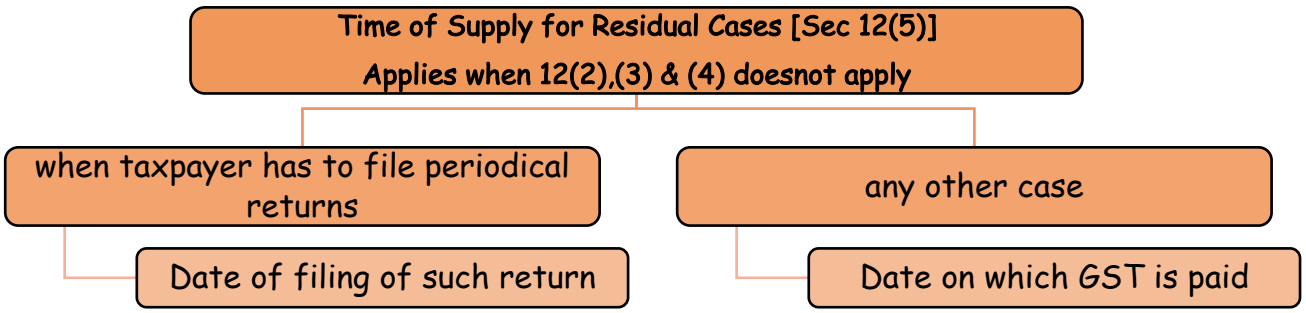


2.4 – Time of Supply of Goods in Residual cases - Section 12(5)

- If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 12, in the following manner:
    - Due date for filing of the periodical return, or
    - In any other case, date on which GST is paid.



2.5 – Time of Supply in case of enhancement in value on account of interest/late fee, etc. for delayed payment of consideration – Section 12(6)

- Commercially, most of the contract of supplies stipulate payment of interest/late fee/penalty etc. in case of payment of consideration beyond the agreed time period. Such interest/late fee/penalty etc. is includible in value of taxable supply.

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- Section 12(6) prescribes that time of supply in case of addition in value on account of interest/ late fee/penalty for delayed payment of consideration for goods is the ***date on which the supplier receives such addition in value.***

3. TIME OF SUPPLY FOR SERVICES – SECTION 13

- Section 13(1) - The liability to pay tax on services shall arise at the time of supply, as determined in terms of the provisions of this section.
- Section 13 must be read with section 31 and rule 47 of CGST Rules, which prescribe in detail the date on which tax invoice for a supply of service must be issued in various situations.

3.1 - Time of supply of services under reverse charge - Section 13(3)

- The time of supply of service on which GST is payable on reverse charge basis ***(except on services received from associated enterprises located outside India)*** under sub-sections (3) and (4) of section 9 is determined in terms of section 13(3)(a) and (b).
- The time of supply for such service will be the earlier of the following:
    - Date of payment, or
    - Date immediately following 60 days since issue of invoice (or any other document in lieu of invoice) by the supplier.

- **Date of Invoice if invoice is required to be issued by recipient**

- If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.
- "Date of payment" in the above situation refers to the date on which the payment is recorded in the books of account of the entity that receives the service (recipient of service), or the date on which the payment is debited from the entity's bank account, whichever is earlier.
- In case of allocation of spectrum licenses to telecom operators by the Government, it is regarded as continuous supply of service and tax shall be payable by the telecom operators under RCM and time of supply is determined accordingly.
- ***Import of services between associated enterprises*** - In the case of service received from an associated enterprise located outside India, the time of supply will be
  - Date of payment for the service, or
  - Date of entry of the service in the books of account of the recipient, whichever is earlier.

3.2 - Time of supply of service under forward charge - Section 13(2)

- For supply of service on which the supplier is liable to pay tax, the time of supply will be the earlier of the dates given below:
  - if the invoice is issued within the time prescribed under section 31;
    - Date of invoice or
    - Date of receipt of payment (to the extent the invoice or payment covers the supply of services),
  - if the invoice is not issued within the time prescribed under section 31,
    - Date of provision of service or
    - Date of receipt of payment (to the extent the payment covers the supply of services)
    - If the above two conditions are not applicable, the time of supply will be
      - Date on which the recipient of service shows receipt of the service in his books of account.
- "Date of receipt of payment" in the above situation refers to
  - Date on which the payment is recorded in the books of account of the entity (supplier of service) that receives the payment, or
  - Date on which the payment is credited to the entity's bank account, whichever is earlier.

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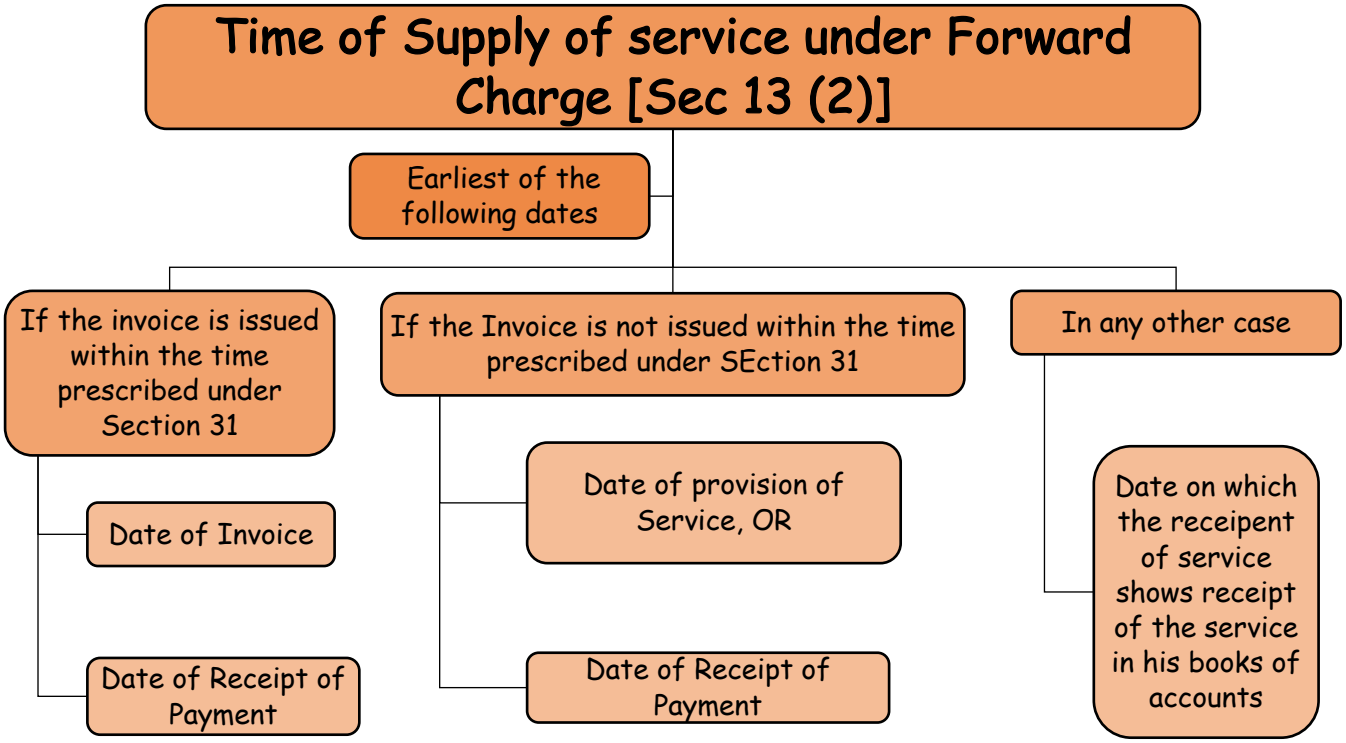
- Where a part of the consideration is paid in advance or invoice is issued for part payment, the time of supply will not cover the full supply. The supply shall be deemed to have been made to the extent it is covered by the invoice or the part payment.



3.3 – Time limit for issuance of Invoice for Supply of Services – Services 31

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- As per section 31(2) read with rule 47 of CGST Rules, the tax invoice needs to be issued ***either before the provision of service or within 30 days*** (45 days in case of insurance companies/ banking companies/ financial institutions including NBFCs) ***from the date of supply of service.***

- In case of insurance companies/ banking companies/ financial institutions including NBFCs/ telecom companies/ notified supplier of services making taxable supplies between distinct persons as specified in section 25, invoice may be issued ***before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made*** [Second proviso to rule 47]

- In case of continuous supply of services, the invoice should be issued either

  i. **on/ before the due date of payment or**

  ii. **before/ at the time when the supplier of service receives the payment, if the due date of payment is not known**

  iii. **on/ before the date of completion of the milestone event when the payment is linked to completion of an event [Section 31(5)].**

Note: In case of Supply of Services of Construction of road and maintenance of National Highway Projects of NHAI in HAM Model i.e., Hybrid Annuity Mode, time of supply shall be determined as per Section 13(2) only by treating the same as continuous supply of service.

Time of Supply of Services: Determined as per Sec 13(2) of CGST Act. 2017

- Invoice date or payment date, whichever is earlier, if invoice is issued within the due date
- Completion date or payment date. whichever is earlier. if invoice not issued within the due date

Continuous supply of Services [Section 2(33) *– means*

- *a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis*
- *under a contract*
- *for a period exceeding 3 months with periodic payment obligations and*
- *includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.*

- In case of cessation of supply of services before completion of supply, the invoice (to the extent of the supply made before such cessation) should be issued ***at the time when the supply ceases*** [Section 31(6)]

~~3.4 – Time of supply of Vouchers exchangeable for Services – Section 13(4)~~

- ~~The term voucher has already been explained under the Heading "Time of Supply of Goods".~~
- ~~The time of supply of vouchers that are exchangeable for services is stipulated as the~~
  - ~~Date of issue of the voucher if the supply is identifiable at that point, or~~
  - ~~Date of redemption of the voucher in other cases.~~

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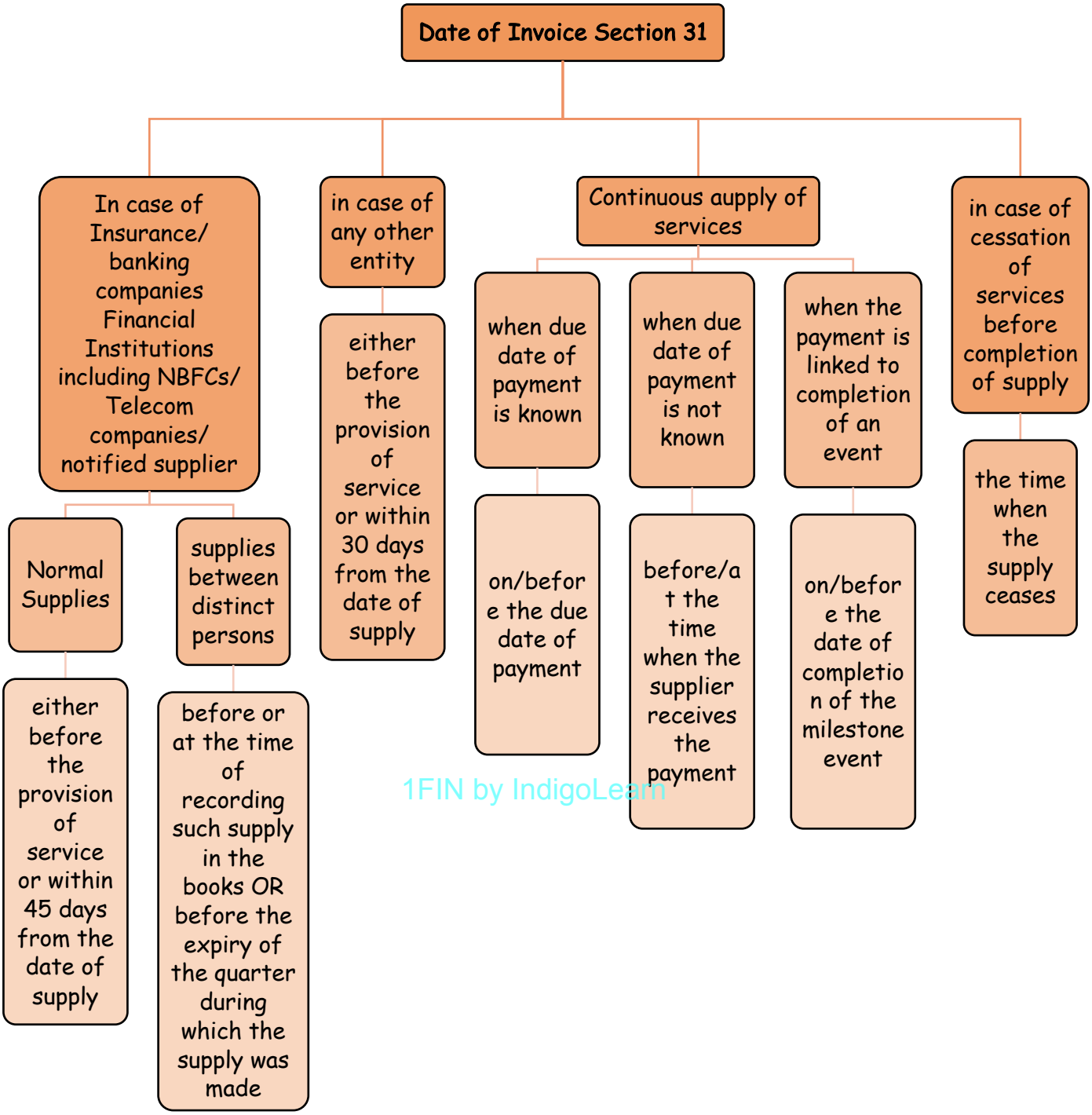
3.5 - Residual case - Section 13(5)

- If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 13, in the following manner:
  - Date on which periodical return for the period is required to be filed, or
  - In any other case, date on which GST is paid.

3.6 - Enhancement of value on account of interest/late fee etc. for delayed payment of consideration - Section 13(6)

- The provisions for time of supply in case of addition in value by way of interest, late fee/penalty for delayed payment of consideration are the same for goods and services.
- Section 13(6) prescribes that time of supply in case of addition in value by way of interest/ late fee/penalty for delayed payment of consideration for a service is the
  - Date on which the supplier receives such addition in value.



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4. TIME OF SUPPLY FOR CHANGE IN RATE OF TAX – SECTION 14

Sec.	Point	Provision
14	Applicability	This section applies where there is a change in the rate of tax in respect of goods or services or both.
14	Overriding effect	This section applies notwithstanding anything contained in section 12 or section 13
14	Certain acronyms	(a) DOI = Date of Issue of invoice by the supplier. (b) DOS = Date of supply of goods or services or both (c) DOC = Date of change in the rate of tax (d) DOP = Date of receipt of payment i.e., date on which supplier receives payment with respect to supply, being earlier of — ♦ DOPE = Date on which the Payment is Entered in his books of account ♦ DOPB = Date on which the payment is credited to his bank account. DOP = DOPB, if 'DOPB' > 'DOC + 4 working days' : The date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Determination of Time of Supply (TOS)

14	DOS is -	DOI is -	DOP is -	Then, TOS is -
(a)(i)	Before DOC	After DOC	After DOC	TOS = DOP or DOI, whichever is earlier
(a)(ii)	Before DOC	Before DOC	After DOC	TOS = DOI
(a)(iii)	Before DOC	After DOC	Before DOC	TOS = DOP
(b)(i)	After DOC	Before DOC	After DOC	TOS = DOP
(b)(ii)	After DOC	Before DOC	Before DOC	TOS = DOP or DOI, whichever is earlier
(b)(iii)	After DOC	After DOC	Before DOC	TOS = DOI
	Section 14 propounds majority rule [Analysis] : Section 14 is based on majority rule, as follows — If two of three dates (DOS, DOI and DOP) fall on one side, ToS would lie on that side. Further, ToS would be DOI or DOP only. If DOI and DOP both fall on same side, then, TOS = Earlier of DOL and DOP.			

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Note:

- Above concept of Section 14 does not apply to goods since time of supply in case of goods is date of invoice i.e., actual date of invoice or last date when invoice is ought to have been issued whichever is earlier.

Special procedure for determining the time of supply of services in certain cases:

With effect from 01.04.2019, supply of services by a landowner to a developer by way of

i. transfer of transferable development rights (TDR) or floor space index (FSI);

ii. granting of long-term lease,

for construction of residential apartments have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate or first occupation of the project, whichever is earlier, and tax is paid on them.

Such exemption for TDR, FSI, long term lease (premium) shall not be available in case of flats which remain un-booked on the date of issuance of completion certificate or first occupation of the project, whichever is earlier. The promoter (developer) shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of (i) value of development rights and/or FSI, or (ii) upfront amount paid for long term lease, as is attributable to such un-booked residential apartments.

For such persons, the liability to pay tax on, -

a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

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c) the upfront amount paid by him for long term lease of land relatable to construction of residential apartments in the project; and

d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI),

shall arise on the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

[Notification No. 6/2019 CT (R) dated 29.03.2019/ Notification No. 6/2019 IT (R) dated 29.03.2019]

ILLUSTRATIONS

Illustration 1

Royal Sweet Co., Delhi, a registered supplier, has furnished the details of the following few transactions which took place in November, 20XX:

S.No.	Date	Particulars	Date of Invoice	Amount (Rs.)
I.	11.11.20XX	Payment made to an advocate in Delhi	07.07.20XX	1,25,000
II.	20.11.20XX	Paid sitting fees to Director from Haryana for meeting in Delhi on 15.10.20XX [Inter-State supply]	15.10.20XX	75,000

Assume the rates of taxes to be as under: -

Particulars	Rate
CGST	9%
SGST	9%
IGST	18%

You are required to compute GST [CGST, SGST/IGST, as the case maybe] payable for themonth of November, 20XX along with time of supply of the afore mentioned activities.

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Illustration 2.1

Explain the meaning of the term "date of receipt of payment" as per section 13 of theCGST Act,2017.

Illustration 2.2

M/s. Ramchandra Associates has received some taxable services from Mohan Dalal (P)Ltd. on 12.01.20XX by making a cash payment of Rs. 5,00,000 on same day.

Payment was entered in the books of accounts of

- M/s. Ramchandra Associates on 16.01.20XX
- Mohan Dalal (P) Ltd. on 20.01.20XX.

Invoice was issued by Mohan Dalal (P) Ltd. on 18.01.20XX. Determine the time of supplyin the given case.

Illustration 3

Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S. No	Date of receipt of goods	Date of payment by recipient of goods	Date of issue of invoice by supplier of goods
(i)	July 1	August 10	June 29
(ii)	July 1	June 25	June 29
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29
(vi)	August 1	August 10	June 29

Illustration 4

Determine the time of supply in the following cases assuming that GST is payable underreverse charge:

S. No	Date of payment by recipient of services	Date of issue of invoice by supplier of services
(i)	August 10	June 29
(ii)	August 10	June 1
(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank accounton June 30	June 1
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank accounton June 26	June 29

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Illustration 5

Kabira Industries Ltd engaged the services of a transporter for road transport of a consignment on 17th June

- and made advance payment for the transport on the same date, i.e., 17th June.
- However, the consignment could not be sent immediately on account of a strike inthe factory, and instead was sent on 20th July.
- Invoice was received from the transporter on 22nd July.What

is the time of supply of the transporter's service? Note:

Transporter's service is taxed on reverse charge basis

Illustration 6

Raju Pvt Ltd. receives the order and

- advance payment on 5th January for carrying out an architectural design job.
- It delivers the designs on 23rd April. By oversight, no invoice is issued at that time,and it is issued much later, after the expiry of prescribed period for issue of invoice.

When is the time of supply of service?

Illustration 7

Investigation shows that 150 cartons of ceramic capacitors were dispatched on 2ndAugust, but no invoice was made, and the cartons were not entered in the accounts.

There was no evidence of receipt of payment.

What is the time of supply of 150 cartons for the purpose of payment of tax?

Illustration 8

An order is placed on Ram & Co. on 18th August for supply of a consignment ofcustomised shoes.

- Ram & Co. gets the consignment ready and informs the customer and issues theinvoice on 2nd December.
- The customer collects the consignment from the premises of Ram & Co. on 7thDecember and electronically transfers the payment on the same date,
- which is entered in the accounts on the next day, 8th December

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What is the time of supply of the shoes for the purpose of payment of tax?

Illustration 9

Sodexo **meal coupons** are sold to a company on 9th August for being distributed to theemployees of the said company.

The coupons are valid for six months and can be used against purchase of food items. The employees use them in various stores for purchases of various edible items on different dates throughout the six months.

What is the date of supply of the coupons?

Illustration 10

A firm of advocates

- issues invoice for services to ABC Ltd. on 17th Feb.
- The payment is contested by ABC Ltd. on the ground that on account of negligence of the firm, the company's case was dismissed by the Court for non-appearance, which necessitated further appearance for which the firm is billing the company.
- The dispute drags on and finally payment is made on 3rd November.Identify

the time of supply of the legal services.

Note: Legal services are taxable on reverse charge basis.

Illustration 11

Modern Security Co. provides service of testing of electronic devices. In one case, it tested a batch of devices on 4th and 5th September but could not raise invoice till 19th November because of some dispute about the condition of the devices on return.

The payment was made in December.

What is the method to fix the time of supply of the service?

Illustration 12 (May 2018)

M/s Mansh and Vansh Trading Company, a registered supplier, is liable to pay GSTunder forward charge.

Determine time of supply from the following information furnished by it:

Goods supplied on	3rd Oct
Invoice issued on	5th Oct
Payment received on	9th Oct

Illustration 13 (Past Exam)

Mr. Lakhan provides Continuous Supply of Services (CSS) to M/s TNB Limited. Hefurnishes the following further information:

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(i)	Date of commencement of providing CSS	01-10-2017
(ii)	Date of completion of providing CSS	31-01-2018
(iii)	Date of receipt of payment by Mr.Lakhan	30-03-2018

Determine the time of supply of issue of invoice as per provisions of CGST Act, 2017, inthe following circumstances:

1. If no due date of payment is agreed upon by both under the contract of CSS
2. If payment is linked to the completion of service
3. If M/s TNB Limited has to make payment on 25-03-2018 as per the contract between them.

Illustration 14 (Past Exam)

On 4th September 2017, V.R. Mehman, a famous music composer received Rs.3 crore of consideration from M/s Zilmil Music Co. Ltd. for sale of copyright of his original music album.

He finished his work and make available the CD to the music company on 20th July and raised invoice on 24th July.

What will be the time of supply as per CGST Act, 2017? Note: Above

services is taxable under Reverse Charge basis.

Illustration 15

XYZ & Co., a firm of chartered accountants issued invoice rendered to Mr.A on 7th September 2017.

Determine time of supply in the following independent cases:

1. Provision of service completed on 1st August 2017
2. Provision of service completed on 14th August 2017
3. Mr. A made payment on 3rd August 2017 where provision of service wasremaining to be completed
4. Mr. A made payment on 15th September 2017 provision of service was remainingto be completed

Illustration 16.1

M/s. Wanderlust Travels (P) Ltd. purchased a bus chassis from M/s. Krishi Motors Ltd. fora consideration of Rs. 90 Lakhs on 01.10.20XX.

- M/s. Wanderlust Travels (P) Ltd. sent the bus chassis for body building to M/s. Bhagwant Fabricators and paid in advance the total consideration of Rs. 25.00 lakhon 15.10.20XX.
- M/s. Bhagwant Fabricators, after completing the bus body, informed M/s. Wanderlust Travels (P) Ltd for carrying out the inspection of work done on 05.11.20XX
- Wanderlust Travels (P) Ltd visited the workshop of M/s. Bhagwant Fabricators on 08.11.20XX and confirmed that the bus body was in accordance with the terms of contract.

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The last date of issuing by M/s. Bhagwant Fabricators invoice is:

a. 15.10.20XX
b. 08.11 20XX
c. 08.12.20XX
d. 05.12.20XX

Illustration 16.2

Banke Bihari (Pedewala), is a famous sweets maufacturer, located and registered inMathura, Uttar Pradesh.

- He received an order for 200 Kg. of sweets on 2nd May,2019 from M/s. Ghoomghoom Travels (P) Ltd., located and registered in same locality of Mathura for a total consideration of Rs. 1,00,000/-.
- All 200 Kg. sweets were delivered to M/s. Ghoomghoom Travels (P) Ltd. on 5th May,2019, but without invoice, as accountant of Mr. Banke Bihari was on leave on that day.
- However, the invoice was raised for the same on 6th May, 2019, when the accountant joined the office after leave. Payment in full was made on 7th May, 2019.

Determine the time of supply of goods in this case.

(a) 2nd May, 2019

(b) 5th May, 2019
(c) 6th May, 2019
(d) 7th May, 2019

Illustration 16.3

Chiku Traders is a registered supplier of plastic goods. On 10th April, 2018, Chiku Traders received an order from Neelu Traders for supply of a consignment of plasticgoods.

- Chiku Traders gets the consignment ready by 15th April, 2018.
- The invoice for the consignment was issued the next day, 16th April, 2018.
- Neelu Traders collects the consignment from the godown of Chiku Traders on 25th April, 2018 and hands over the cheque towards payment on the same date.
- The said payment is entered in the books of accounts of Chiku Traders on 26th April,2018 and amount is credited in their bank account on 27th April, 2018.

Determine the time of supply of the plastic goods supplied by Chiku Traders to NeeluTraders as per the provisions of CGST Act, 2017

Illustration 17

Mr. Mahendra Sharma, an interior decorator registered at Ahmedabad (Gujarat),provided service to one of his clients XYZ Company Ltd., registered at Pune (Maharashtra).

- The provision of service was completed on 10-08-2018 and payment received wasentered in the books of Mr. Mahendra Sharma on 11-08-20XX.
- With effect from 16/08/20XX, applicable GST rate was increased from 5% to 12%.
- However, payment for the service received was credited in his bank account on 17/08/20XX and invoice for the same was raised on 23-08-20XX.
- Mr. Mahendra Sharma claimed that he is liable to pay IGST @ 5%. But the department took the view that he is liable to pay IGST @12%.
- Examine the correctness of Mr. Mahendra Sharma's contention and determine thetime of supply and applicable rate of tax as per the statutory provisions.

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Would your answer undergo any change in the above case if the payment was creditedto the bank account on 14-08-20XX instead of 17-08-20XX?

Note: You may assume that all days are working days

Illustration 18

Determine Time of Supply from following particulars:

1. On 8-9-20XX community hall booked for a marriage. Sum agreed is Rs.1,20,000.Advance of Rs.20,000 recorded in books of accounts. On 10-9-20XX advance is credited in Bank account.
2. On 2-11-20XX marriage held in community hall. On 18-12-20XX invoice is Issued for Rs.1,20,000 indicating balance Rs.1,00,000 payable on 22-12-20XX balance Rs.1,00,000 is recorded in books of account. On 24-12-20XX payment of Rs.1,00,000is credited in bank account

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6. PLACE OF SUPPLY

Contents

- Understanding inter state and intra state supply.
- Understanding the importance of place of supply.
- Understanding place of supply when supplier and recipient are located in India.
- Understanding place of supply when supplier or recipient are located outside India.

In this chapter, we will discuss various sections of IGST Act which helps in determining the place of supply.

1. INTER-STATE SUPPLY - SECTION 7 OF IGST ACT

1.1 - Supply of goods

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- In case of supply of goods, the two important determining factors are –
    - ***Location of the supplier*** and
    - ***Place of supply***
- Where the location of the supplier and the place of supply are in ***two different states or union territories***, the supply shall be treated as inter-state supply.
- Supply of goods ***imported*** into the territory of India, till they ***cross the customs frontiers*** of India shall be treated to be a supply of goods in the course of inter-State trade or commerce.

1.2 - Supply of services

- In case of supply of services, the two important determining factors are –
    - ***Location of the supplier*** and
    - ***Place of supply***
- Where the location of the supplier and the place of supply are in ***two different states or union territories***, the supply shall be treated as inter-state supply.
- Supply of services ***imported*** into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

1.3 - Deemed inter-state supply

The supply of ***goods or services*** shall be treated as inter-state supply when –

- the ***supplier*** is located ***in India*** and the ***place of supply is outside India;***
- supply is made ***to or by*** a ***Special Economic Zone*** developer or a Special Economic Zone unit; or
- supply is ***made in the taxable territory***, not being an intra-State supply and ***not covered elsewhere*** in this section.

2. INTRA-STATE SUPPLY - SECTION 8 OF IGST ACT

2.1 Supply of goods

- In case of supply of goods, the two important determining factors are –
  - ***Location of the supplier*** and
  - ***Place of supply***
- Where the location of the supplier and the place of supply are in ***same state or union territory***, the supply shall be treated as intra-state supply.

2.2 Exceptions

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There are certain cases where the supply shall not be treated as intra-state irrespective of the fact that the location of the supplier and place of supply are in same state.

These exceptions are –

- supply of goods ***to or by*** a ***Special Economic Zone*** developer or a Special Economic Zone unit;
- goods ***imported*** into the territory of India till they cross the customs frontiers of India; or
- supplies ***made to a tourist*** referred to in section 15.

2.3 Supply of services

- In case of supply of services, the two important determining factors are –
  - ***Location of the supplier*** and
  - ***Place of supply***
- Where the location of the supplier and the place of supply are in ***same state or union territory***, the supply shall be treated as intra-state supply.
- However, intra-State supply of services shall ***not include*** supply of services ***to or by*** a ***Special Economic Zone*** developer or a Special Economic Zone unit.

2.4 Distinct establishments

- ***Establishment*** shall mean a ***branch, an agency or a representative office***, through which a person is ***carrying on his business***.
- Where a person has –
    - an establishment ***in India*** and any other establishment ***outside India***,
    - an establishment ***in a State or Union territory*** and any other establishment ***outside that State or Union territory***, or
    - an establishment in ***a State or Union territory*** and any ***other establishment registered within that State or Union territory***, then

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

3. SUPPLIES IN TERRITORIAL WATERS - SECTION 9 OF IGST ACT

Where the ***location of the supplier or the place of supply is in the territorial waters***, then such location of such supplier or the place of supply shall be ***deemed*** to be in the ***coastal State or Union territory where the nearest point of the appropriate baseline is located.***

Note – Territorial waters extend ***upto 12 nautical miles*** from the closest baseline.

4. PLACE OF SUPPLY OF GOODS OTHER THAN SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA - SECTION 10 OF IGST ACT

Section 10 deals with determination of place of supply in various cases of supply of goods except imports or exports. The provisions contained in the Section are elaborated hereunder –

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4.1 Supply involves movement of goods - Section 10(1)(a)

Where the supply involves movement of goods the place of supply of such goods shall be the ***location of the goods*** at the time at which the ***movement of goods terminates for delivery to the recipient***.

Such movement may be caused by the supplier or the recipient or by any other person.

Example –
What will be the place of supply if Mr. Raj of Delhi visits a mall in Madhya Pradesh and buys a shirt at the mall?

In this case, there is movement of goods to Mr. Raj and it is to be noted that the movement of goods ***for delivery to the recipient*** ends at the mall itself where it is handed over to Mr. Raj. Thus, in this case the place of supply will be Madhya Pradesh.

However, if Mr. Raj had given his address and told the supplier to send the goods to Delhi, the place of supply would have been Delhi as the delivery to the recipient i.e. Mr. Raj would have end there.

Thus, it is very important to check that what is the location where the delivery to the recipient terminates.

Note: In case of goods purchased over the counter in one state and then transported to another state by buyer then the place of supply would be the location as per the address of the said person

recorded in the invoice issued in respect of the said supply and the location of supplier where the address of the said person is not recorded in the invoice.

4.2 Supply involving 'Bill to ship to' model - Section 10(1)(b)

When the ***billing address and shipping address of the goods are not same***, it comes under 'Bill to ship to' model.

Example –

Mr. Anil of Madhya Pradesh got an order from Mr. Ajay of Gujarat to supply him 10000 shirts. Mr. Anil gives the order to Mr. Ashok of Gujarat and tells him to supply the shirts to Mr. Ajay.

In this case, the invoice raised by Mr. Ashok will be billed to Mr. Anil but the goods will be shipped to Mr. Ajay.

In such cases, where the goods are delivered to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, it shall be ***deemed that the said third person has received the goods*** and the ***place of supply*** of such goods ***shall be the principal place of business of such person***.

Thus, in our example, it shall be deemed that the goods are received by Mr. Anil and the place of supply will be Madhya Pradesh.

It is important to note that the above transaction can be carried out ***before or during movement of goods*** i.e. if the goods are already in transit but the supplier is directed to deliver the goods to some other location, Section 10(1)(b) will be attracted.

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4.3 - Supply does not involve movement of goods - Section 10(1)(c)

Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the ***location of such goods at the time of the delivery to the recipient.***

Example –

Mr. Bhawani of Maharashtra opens a new branch office at Haryana. He purchases a building for office from a builder based in Haryana. He also enters into a separate contract with the builder for purchase of pre-installed office furniture and fixtures in the building.

Though there will be no GST liability on purchase of building (Schedule III) but the office furniture and fixtures will be liable to GST.

Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient i.e. Haryana.

4.4 – Supply involving purchasing goods Over the Counter in one state and transported to another state by the buyer – Section 10(1)(ca)

Where the ***supply of goods*** is made to a person ***other than a registered person***, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c) of section 10, be the location as per the address of the said person recorded in the invoice issued in respect of the said

supply and the location of the supplier where the address of the said person is not recorded in the invoice.
POS in case of OTC sales to unregistered persons is as follows:

Where the address of the unregistered person is recorded in the invoice.	•POS is location as per address of unregistered person recorded in the invoice
Where the address of the unregistered person is not recorded in the invoice.	•POS is location of the supplier

In case of supply through ECO to an unregistered person, POS shall be the delivery address and not the billing address.

4.4 - Supply involving installation or assembly of goods - Section 10(1)(d)

Where the goods are assembled or installed at site, the place of supply shall be the ***place of such installation or assembly.***

Example –
Mr. Krunal of Goa purchases a machine from Mr. Kapil of Goa for being installed in its factory at Gujarat. Since, the machine is installed at Gujarat, the place of supply will be Gujarat.

4.5 - Supply of goods on board or conveyance - Section 10(1)(e)

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Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the ***location at which such goods are taken on board.***

Example –
Mr. Chandra has 200 shirts with him for the purpose of sale and he boards the Mumbai-Jaipur train at Surat. He sells 10 shirts to Mr. Mohan at Kota (Rajasthan) in the train journey.
Since, the goods were taken on board by him at Surat, the place of supply will be Surat (Gujarat).

4.6 - Situation where place of supply cannot be determined - Section 10(2)

Where the place of supply of goods cannot be determined, the place of supply shall be determined in ***such manner as may be prescribed***.
Note: In case of supplier of online money gaming, not located in taxable territory shall be liable to pay IGST. Supplier is required to obtain a single registration. Person who is located in taxable territory and representing him shall be liable to pay tax. If there is no such, they must appoint such person and make him liable.

5. PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA - SECTION 11 OF IGST ACT

- In case of ***imports***, the place of supply shall be the ***location of the importer***.
- In case of ***exports***, the place of supply shall be the ***location outside India***.

6.SUMMARY – PLACE OF SUPPLY OF GOODS

Involves movement of goods	Location of the goods when goods are delivered to the recipient
Bill to Ship to	Principal place of business of the person who caused the delivery of goods
Does not involve movement of goods	Location of the goods at the time of delivery
Involves assembly or installation of the goods	Place of such installation or delivery
Goods supplied on board of a conveyance	Location where goods were taken on board
Place of supply cannot be determined	In the prescribed manner

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7. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OF SERVICE AND THE LOCATION OF THE RECIPIENT OF SERVICE IS IN INDIA - SECTION 12 OF IGST ACT

Section 12 lists different types of services and place of supply in each of those cases. However, it contains only those services where the location of supplier and recipient are in India.

7.1 - General rule - Section 12(2)

The general rule for determination of place of supply is applicable only for the services which are not covered under sub-section 12(3) to 12(14).

The place of supply shall be –

- In case of registered recipient - Location of the recipient
- In case of unregistered recipient –
  - If the address of the recipient is available on records, then such location,
  - If the address of the recipient is not available on records, then location of the supplier of services.

Example –

1. Mr. Tej, a Chartered Accountant registered in Telangana is providing services to a Domo Ltd. registered in Mumbai. What will be the place of supply?

The place of supply will be the location of the registered recipient. Since, the company is registered in Maharashtra, the place of supply will be Maharashtra.

2. Mr. Shreyansh, a registered person in Gujarat was travelling to Mumbai by car. His car broke down during the journey and he stopped at the local repairing shop at Mumbai. What will be the place of supply?

In this case, since the repair shop would not have address of Mr. Shreyansh, the place of supply will be the location of the supplier of service i.e. Mumbai.

7.2 - Services related to immovable property - Section 12(3)

Section 12(3) covers supply of services related to immovable property like –

- services provided by –
    - architects,
    - interior decorators,
    - surveyors,
    - engineers,
    - other related experts,
    - estate agents,
- service provided by way of grant of rights to –
    - use immovable property or
    - carrying out or co-ordination of construction work
- services by way of lodging accommodation by a –
    - hotel,
    - inn,
    - guest house,
    - home stay,
    - club,
    - campsite,
    - house boat or
    - any other vessel
- services by way of accommodation in any immovable property for organising any –
    - marriage or reception,
    - matters related to official, social, cultural, religious or business function
- any service ancillary to the service referred above.

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Place of supply in the above cases –

1. General rule –

Place of supply of service shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.

2. Location of immovable property is outside India –

If the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

3. Immovable property is located in more than one state or union territory –

Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as –

- made in each of the respective States or Union territories,
- in proportion to the value for services separately collected or determined
- in terms of the contract or agreement entered into in this regard.

However, in the absence of such contract or agreement, the place of supply shall be determined as per the provisions of Rule 4 which is enumerated below –

1. In case of services provided by way of lodging accommodation by hotel, inn, guest house etc. and its ancillary services – Number of nights stayed in such property.
2. Services provided by way of accommodation in any immovable property for organising any marriage or reception etc. and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, where such property is a single property located in 2 or more contiguous States or Union territories or any other ancillary service – Area of the immovable property lying in each State or Union territory.
3. Services by way of lodging accommodation by a house boat or vessel and its ancillary services – Time spent by the boat or vessel in each such State or Union territories as declared by the service provider.

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Example –

1. Mr. Ambani, registered in Mumbai, contacted an architect Mr. Aman, registered in Meghalaya to build a villa in Paris. What will be the place of supply?

   In this case, since the location of the immovable property is outside India, the place of supply shall be the location of the recipient i.e. Mumbai.

2. Mr. Ambani was impressed with the work of Mr. Aman and he gave him another contract to build 3 farm houses in Goa, Kerala and Darjeeling. What will be the place of supply in such case?

   In this case, since the location of the property is more than one state, the place of supply shall be all the 3 states or union territory i.e. Goa, Kerala and Darjeeling in proportion to the value of supply.

3. Mr. Arun, registered in Goa, went on a trip to Kerala through a trip organiser named Nature cuddle, registered in Surat. The lodging arrangements were made on a boat which travelled through the cities of Kerala and Karnataka. What will be the place of supply?

In this case, the place of supply will be both Kerala and Karnataka on the basis of the time spent in each of these states.

Summary

Place of supply - General rule	→	Location of immovable property
Property is located outside	→	Location of the recipient
Property in more than one state	→	Proportion of value of service as per contract

In case of no contract or agreement

Stay at hotel, inn, etc.	→	Number of nights stayed
Hotel or inn located in more than one state	→	Area of the property
Marriage or reception	→	Area of the property
Stay at a house boat	→	Time spent

7.3 - Restaurant and personal grooming services - Section 12(4)

The services covered in Section 12(4) are –

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- restaurant and catering services,
- personal grooming,
- fitness,
- beauty treatment,
- health service including cosmetic and plastic surgery

The place of supply for the above-mentioned services shall be the ***location where the services are actually performed***.

Example –

Mr. Rohan, registered in Ahmedabad, went on a trip to Indore and had lunch at a restaurant. What will be the place of supply?

Since, the location of the service is Indore, the place of supply shall be Indore.

7.4 - Training and performance appraisal services - Section 12(5)

The services covered under Section 12(5) are –

- Training and
- Performance appraisal

The place of supply shall be –

- If the recipient is registered – location of the recipient.
- If the recipient is not registered – location where the services are actually performed.

Example –

Mr. Akbar, a Chartered Accountant registered in Delhi is called at Mahabaleshwar by Wipro Ltd. (registered in Kerala) to train the employees on topic of GST. What will be the place of supply?

Since, Wipro Ltd. is a registered person, place of supply will be the location of the recipient i.e. Kerala.

7.5 - Admission to an event or amusement park - Section 12(6)

The services covered under Section 12(6) are **admission** to a –

- Cultural event,
- Artistic event,
- Sporting event,
- Scientific event,
- Educational event,
- entertainment event,
- amusement park or
- any other place and services ancillary thereto.

The place of supply shall be the place where the ***event is actually held*** or where the park or such other place is located.

Example –

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Mrs. Shreya, registered in Bhopal, went to a cultural event at Mussoorie organised by Jeelo Zindagi (registered in Karnataka). What will be place of supply?

Since, the event is taking place in Mussoorie, the place of supply shall be Mussoorie.

7.6 - Organising an event - Section 12(7)

The services covered under Section 12(7) are –

- ***organisation*** of –
    - cultural event,
    - artistic event,
    - sporting event,
    - scientific event,
    - educational event,
    - entertainment event or
- supply of services in relation to a –
    - conference,
    - fair,
    - exhibition,
    - celebration or
    - similar events or
- services ***ancillary*** to organisation of any of the events or services referred above, or

- assigning of ***sponsorship*** to such events.

The place of supply for such service shall be –

- In case of a ***registered recipient*** – the location of such recipient.
- In case of ***unregistered recipient*** –
  - the location where the ***event is actually held***,
  - but if the location of the ***event is outside India***, then the place of supply shall be ***location of the recipient***.
- In case the ***event is held in more than one state*** and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in ***each of the respective States in proportion to the value for services*** separately collected or determined in ***terms of the contract or agreement*** entered into in this regard.
- In the ***absence of contract or agreement***, the value in apportioned on the basis of ***generally accepted accounting principles [Rule 5]***.

Example –

1. Mr. Alpesh, registered in Silvassa, hired WedMeGood, registered in Gurgaon for organising his destination wedding in Dubai. What will be the place of supply in this case?

   Since, Mr. Alpesh is a registered person, the place of supply in this case will be the location of the recipient i.e. Silvassa.

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2. Rohit Shetty productions, registered in Mumbai has hired PQP Ltd, registered in Noida, for organising promotional events in different cities of Maharashtra, Gujarat and Rajasthan for their upcoming film Singham 5. What will be the place of supply in this case?

   Since, Rohit shetty productions is registered in Mumbai, the place of supply shall be the location of the recipient i.e. Mumbai.

   It is important to note that the provision related to apportionment of service in multiple states will not apply in this case as the recipient is registered and the place of event is taken as the place of supply only in case of an unregistered recipient.

7.7 - Service of transportation of goods - Section 12(8)

The services covered in Section 12(8) is transportation of goods by any means including mail or courier.

The place of supply will be as follows –

1. **General rule –**
   - If the ***recipient is registered*** – the ***location of recipient***.

- If the ***recipient is unregistered*** – the ***location*** at which such ***goods are handed over for their transportation.***

Example –

1. Mr. Rohan, registered in Uttar Pradesh hires a transportation company, registered at Delhi for transportation of goods to Gujarat. What will be the place of supply?

   In this case, since the recipient of service i.e. Mr. Rohan is a registered person, the place of supply will be location of the recipient i.e. Uttar Pradesh.

2. Deepali, a CA student from Surat (unregistered) has sent some books via Bluedart courier service, registered at Mumbai to her friend Shilpa staying at Delhi (unregistered). What will be the place of supply?

   In this case, since the recipient of service i.e. Deepali is an unregistered person, the place of supply will be the place where goods are handed over for transportation i.e. Surat.

7.8 - Service of transportation of passengers - Section 12(9)

Section 12(9) covers the service of transportation of passengers by any means.

The place of supply will be determined as follows –

- In case the ***recipient is registered*** – the ***location of recipient***.
- In case the ***recipient is unregistered*** –

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  - the ***place where the passenger embarks on the conveyance*** for a continuous journey.
  - Where the ***right to passage is given for future use*** and the ***point of embarkation is not known*** at the time of issue of right to passage, the place of supply shall be determined in accordance with the ***provisions of 12(2)***.

It is to be noted that the ***return journey shall be treated as a separate journey***, even if the right to passage for onward and return journey is issued at the same time.

Example –

1. Mr. Raman, registered in Hyderabad boards the Mumbai – Delhi flight from Mumbai. What will be the place of supply?

   Since Mr. Raman is a registered person, the place of supply shall be the location where he is registered i.e. Hyderabad.

2. What will be the place of supply in the above case if Mr. Raman is an unregistered person and he books a round trip from Mumbai – Delhi – Mumbai?

   Since, Mr. Raman is an unregistered person, the place of supply shall be the place from where he embarks the journey. For Mumbai to Delhi trip, the place of supply shall be Mumbai and for the return trip, the place of supply shall be Delhi.

3. Mr. Raj, a person registered in Jaipur, wins a voucher of Rs. 5,000/- from Hindustan Airlines which can be used within a period of 1 year for booking of tickets. What will be the place of supply?

   Since, Mr. Raj is a registered person, the place of supply shall be his location i.e. Jaipur. If he would have been an unregistered person, we would had to apply the provision of Section 12(2).

7.9 - Services on board a conveyance - Section 12(10)

Section 12(10) consist of services on board a conveyance including a vessel, an aircraft, a train or a motor vehicle.

The place of supply in such cases shall be the ***location of the first scheduled point of departure of that conveyance for the journey.***

Example –

Mr. Sohan, a registered person in Surat, embarks Mumbai-Jaipur flight from Surat (Gujarat). He took a service of watching a movie at the flight by paying Rs. 500/-. What will be the place of supply?

In this case, the place of supply will be the first scheduled point of departure of the conveyance i.e. Mumbai.

7.10 - Telecommunication services - Section 12(11)

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The services covered in Section 12(11) includes –

- Telecommunication services,
- Data transfer service,
- Broadcasting,
- Cable,
- Direct to home.

The place of supply in these services will be as follows –

1. Services by way of ***fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna –***

   - The ***location*** where the telecommunication line, leased circuit or cable connection or dish antenna is ***installed***.
   - However, where the ***leased circuit*** is ***installed in more than one State and a consolidated amount is charged*** for supply of services, the place of supply shall be taken as ***being in each of the respective States or Union territories in proportion to the value for services*** separately collected or determined in ***terms of the contract or agreement*** entered into in this regard.
   - If there is ***no contract or agreement***, the place of supply shall be determined as per ***Rule 6*** i.e., it will be in ***proportion to the number of points*** lying in each such State. The number of points shall be determined as follows –

- In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points.
- Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

Example –

A company TQR Ltd. installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company CPL Ltd. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

2. ***Post-paid mobile connection and internet services –***

   The location of ***billing address of the recipient*** of services on the record of the supplier of services.

   However, if the ***address of the recipient is not available***, the place of supply shall be ***location of the supplier of services***.

3. ***Prepaid mobile connection and internet services and DTH service –***

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   - If the service is taken ***through a selling agent or a re-seller or a distributor*** of subscriber identity module card or re-charge voucher – the place of supply will be ***address of the selling agent or re- seller or distributor*** as per the record of the supplier at the time of supply.
   - If the service is ***received from any other person*** – the place of supply will be the ***location where such pre-payment is received*** or such ***vouchers are sold***.
   - If recharge is done through ***internet banking or other electronic mode of payment*** – the place of supply shall be the ***location of the recipient of services*** on the record of the supplier of services.

4. ***In any other case –***

   - ***Address of the recipient*** as per the records of the supplier of services.
   - If the ***address*** of the recipient is ***not available***, ***location of the supplier*** of services.

Example –

1. Mr. Rahul contacted Airtel to install a dish antenna at his home in Bangalore. Airtel is registered in Maharashtra. What will be the place of supply?

   Since, the dish antenna is installed in Bangalore, the place of supply will be Bangalore.

2. Mr. Rajesh went on a trip to Sikkim and purchases a prepaid voucher of Rs. 500/- for his mobile from a distributor. Mr. Rajesh lives in Gujarat. What will be the place of supply?

   Since, the service of prepaid voucher is taken from a distributor, the place of supply shall be the address of the distributor i.e. Sikkim.

3. Mr. Mahesh, located in Mumbai went on a trip to Darjeeling and he made an online recharge of Rs. 500/- from his hotel room in Darjeeling. What will be the place of supply?

   In this case, since the recharge is done through online mode, the place of supply shall the location of recipient on the record of supplier i.e. Mumbai.

7.11 - Financial and stock broking services - Section 12(12)

- The place of supply of banking and other financial services, including stock broking services to any person shall be the ***location of the recipient of services on the records of the supplier*** of services.
- If the ***location of recipient of services is not on the records*** of the supplier, the place of supply shall be the ***location of the supplier*** of services.

Example –

1. Mr. Mahesh has a bank account in ICICI bank in Karnataka. He visits Delhi for some business work where he want to get a Demand Draft. He went to the branch of ICICI bank in Delhi and got the DD from there. The bank deducted the charges directly from his account with ICICI bank. What will be the place of supply?

   In this case, since Mr. Mahesh already has a account with ICICI bank, the supplier of service i.e. bank has the location of the recipient i.e. Mr. Mahesh on his records. Thus, the place of supply will be location of the recipient of services on the records of the supplier of services i.e. Karnataka.

2. In the above example, what will be the place of supply if Mr. Mahesh gets the DD from Bank of Baroda instead of ICICI.

   Since, Mr. Mahesh doesn't have any account with BOB, the supplier of service i.e. bank does not have the details of the location of the recipient i.e. Mr. Mahesh. Thus, the place of supply will be the location of the supplier i.e. Delhi.

7.12 - Insurance services - Section 12(13)

- If the ***recipient is a registered person – location of the recipient***.
- If the ***recipient is an unregistered person – location of the recipient of services on the records of the supplier*** of services.

Example –

Tata ltd., registered in Mumbai takes insurance from All India life insurance, registered at New Delhi for the goods stored in the warehouse located in Gujarat. What will be the place of supply? What will be the place of supply if Tata Ltd. was unregistered?

Since, the recipient of service i.e. Tata Ltd. is a registered person, the place of supply will be the location of the recipient i.e. Mumbai.

However, if Tata Ltd. was unregistered, the place of supply would have been the location of the recipient of services on the records of the supplier of services i.e. Gujarat.

7.13 - Advertisement services to the Government - Section 12(14)

Section 12(14) covers advertisement services ***provided to –***

- the Central Government,
- State Government,
- a statutory body or
- a local authority

The place of supply in the above cases will be –

If a contract or agreement is there –

In ***each of such States or Union territories*** and the value of such supplies specific to each State or Union territory shall be in ***proportion to the amount attributable*** to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard.

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If there is ***no contract or agreement*** in this regard, the place of supply shall depend upon the ***mode of advertisement***. The method to compute place of supply in such cases is elaborated below ***[Rule 3]***-

1. ***Advertisement in newspapers and publications –***

   Amount payable for publishing an advertisement in ***all the editions of a newspaper or publication***, which are published in each State or Union territory.

2. ***Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T- shirts, etc –***

   Amount payable for the distribution of a specific number of such material in each State or Union territory.

3. ***Advertisements in hoardings –***

   Amount payable for the hoardings located in each State or Union territory, place of supply is the place of hoarding.

4. ***Advertisement on trains –***

   Amount attributable to each State or Union territory calculated in the ***ratio of length of the railway track*** in each of such State or Union territory ***for that train.***

5. ***Advertisements on the back of utility bills of oil and gas companies, etc. –***

Amount payable to each State or Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State or Union territory.

6. ***Advertisements on railway tickets –***

   Amount attributable to each State or Union territory calculated in the ***ratio of number of Railway Stations*** in each of such State/Union territory.

7. ***Advertisements on radio stations –***

   Amount payable to such radio station, which by virtue of its name is part of each State or Union territory.

8. ***Advertisement on television channels –***

   Amount attributable to each State or Union territory calculated ***on the basis of the viewership of such channel*** in each of such State or Union territory. The viewership is derived from –

   - ***Channel viewership figures*** published by the Broadcast Audience Research Council.
   - Figures for the ***last week of a given quarter is used*** for calculating ***viewership for the succeeding quarter***.
   - Where the channel viewership figures relate to a ***region comprising of more than one State or Union territory,*** the viewership figures is calculated in ***ratio of the populations*** of that State or Union territory, as ***determined in the latest Census***.

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   The ratio of the viewership figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

9. ***Advertisements in cinema halls –***

   Amount payable to a cinema hall or screens in a multiplex in each State or Union territory.

10. ***Advertisements on internet –***

    Amount attributable to each State/Union territory calculated basis of the ***internet subscribers*** in each of such State or Union territory. The subscribers shall be determined as follows –

    - ***Internet subscriber figures*** published by the Telecom Regulatory Authority of India (TRAI).
    - ***Figures for the last quarter of a given financial year*** will be used for calculating the number of internet subscribers ***for the succeeding financial year.***
    - Where the internet subscriber figures relate to a region comprising of ***more than one State or Union territory,*** the ***subscriber figures*** for a State/Union

territory of that region shall be ***calculated in the ratio of the populations*** of that State or Union territory, as **determined in the latest census**.

The ratio of the subscriber figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

11. ***Advertisements through SMS –***

Amount attributable to each State or Union territory calculated on the basis of the ***telecom subscribers*** in each of such State or Union territory. The telecom subscribers are calculated as follows –

- Telecom subscribers' figures ***published by the TRAI***.
- Figures ***for a given quarter*** will be used for calculating the subscribers for the ***succeeding quarter***.
- Where such figures relate to a telecom circle comprising of ***more than one State or Union territory***, the subscriber figures for that State or Union territory shall be calculated in the ***ratio of the populations*** of that State or Union territory, ***as determined in the latest census.***

Example –

ZL, a statutory body deals with all the advertisement and publicity of the government. It has issued a release order to 'Zee Tv' channel, registered in Mumbai, for telecasting an advertisement relating to one of the schemes of the Government in the month of September 2022. The advertisement will be telecasted in States – Maharashtra, Gujarat, Rajasthan, Madhya Pradesh and Goa. The total value of service is Rs. 15,00,000/- (exclusive of GST).

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The viewership figures in last week of June 2022 is as follows –

Madhya Pradesh	–	1,00,000
Gujarat + Rajasthan	–	3,00,000
Maharashtra + Goa	–	2,00,000

The population figures (in crores) are given below –

Madhya Pradesh	–	80
Gujarat	–	100
Rajasthan	–	150
Maharashtra	–	140
Goa	–	60

Determine the place of supply of service and value of supply attributable to each state.

In case of broadcasting on TV, the apportionment will be done on the basis of viewership figures of the last week of the preceding quarter. Since, we need to find the viewership for

the month of September 2022, we will use the figures of the last week of the preceding quarter i.e. April – June. Thus, the viewership figures of last week of June 22 will be used.

Since, the figures of viewership are combined, we need to apportion them on the basis of population.

Viewership in Gujarat and Rajasthan is 3,00,000. The population of Gujarat is 100 crores and Rajasthan is 150 crores. Thus, the apportioned viewership =

Gujarat viewership	= 3,00,000 X 100/250	= 1,20,000.
Rajasthan viewership	= 3,00,000 X 150/250	= 1,80,000.

Viewership in Maharashtra and Goa is 2,00,000. The population of Maharashtra is 140 crores and Goa is 60 crores. Thus, the apportioned viewership =

Maharashtra viewership	= 2,00,000 X 140/200	= 1,40,000.
Goa viewership	= 2,00,000 X 60/200	= 60,000.

Thus, the viewership of each state is as follows –

Madhya Pradesh	–	1,00,000
Gujarat	–	1,20,000
Rajasthan	–	1,80,000
Maharashtra	–	1,40,000
Goa	–	60,000

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Thus, the ratio of apportionment between MP:GJ:RJ:MH:GOA = 5:6:9:7:3.

The place of supply for advertising will be all the five states i.e. Madhya Pradesh, Gujarat, Rajasthan, Maharashtra, Goa and the value of supply will be apportioned in the ratio of 5:6:9:7:3.

Thus, value of service –

Madhya Pradesh	–	15,00,000 X 5/30	= 2,50,000
Gujarat	–	15,00,000 X 6/30	= 3,00,000
Rajasthan	–	15,00,000 X 9/30	= 4,50,000
Maharashtra	–	15,00,000 X 7/30	= 3,50,000
Goa	–	15,00,000 X 3/30	= 1,50,000.

8.PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA - SECTION 13 OF IGST ACT

Section 13 contains various provisions to determine the place of supply where either the location of the supplier or the location of the recipient is outside India.

8.1 - General rule - Section 13(2)

The general rule for determination of place of supply is ***applicable only for the services*** which are ***not covered under sub-section 13(3) to 13(13)***.

The place of supply shall be –

- the location of the recipient of the service.
- If the location of the recipient is not available, the place of supply shall be the location of the supplier.

It is to be noted that Section 13 is not concerned whether the recipient is registered under GST or not. Hence, whenever the words 'location of the recipient' is written, we have to check the physical location of the recipient and not the location as per registration under GST.

Example –

Mr. Tej, a Chartered Accountant registered in Telangana is providing services to a company PQR Ltd. based in UK. What will be the place of supply?

If Mr. Tej has the location of the recipient of the service, the place of supply will be UK. But if Mr. Tej do not have the location of the recipient, the place of supply shall be Telangana.

Note: Supply of data hosting services being provided by a data hosting service provider located in India to on overseas cloud computing entity can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6) of IGST Act and POS shall be determined as per Section 13(2) of IGST Act.

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8.2 - Performance based services - Section 13(3)

The place of supply in performance-based services are as follows –

1. ***Goods physically made available by the recipient –***

   If the goods are required to be made physically available by the recipient in order to enable the supplier of service to provide the service, the place of supply shall be the location where the ***services are actually performed.***

   Example –

   M/s ABC Ltd., registered at Gujarat, imported a machinery and the installation services are provided by Mr. Sheldon of USA. Mr. Sheldon visits the location of ABC Ltd. in order to install the machinery. In this case, the place of supply will be the location of where the service is actually performed i.e. Gujarat.

2. ***Service is provided on the goods through a remote location –***

   When the services are provided from a remote location by way of electronic means, the place of supply shall be the ***location where goods are situated at the time of supply of services.***

Example –

Microsoft, located in USA, is facing some issues in the server. They contacted Mr. Abhishek of Chennai in order to solve the issues. Mr. Abhishek checked the server online and resolved the issue. In this case, there is no physical movement and the service is provided online. Thus, the place of supply shall be the location where goods are situated i.e. USA.

3. ***Goods imported into India for the purpose of providing service –***

When the service is provided by temporarily importing the goods in India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, the ***place of supply shall be determined as per the provisions of Section 13(2).***

Example –

In the above example, if the service is imported into India for the purpose of repairs, the place of supply shall be computed as per the provisions of section 13(2) i.e. place of supply shall be the location of the recipient i.e. USA.

4. ***Physical presence of recipient is mandatory –***

In cases where the physical presence of the recipient is mandatory for the supply of service (eg. Salon treatments, haircut, etc.), the place of supply shall be location ***where the service is actually performed.***

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Example –

Shah rukh called Any Christano, a famous makeup artist of USA, to Film City, Mumbai, to provide him beauty services. In this case, the place of supply would be the location where service is actually performed i.e. Mumbai.

5. ***Services supplied in more than one state or Union territory –***

The place of supply of services supplied in more than one state or union territory shall be ***each of those states or Union territories*** and the value shall be determined in ***proportion to the value for services determined*** in terms of the ***contract or agreement*** entered into in this regard.

If there is no contract or agreement, the value shall be apportioned as per the provisions of Rule 7 which is enumerated below –

- When service is supplied to an individual –

  By applying generally accepted accounting principles.

- When service is supplied on same goods –

  Equally dividing the value of service in each of the States or Union territory where the service is performed.

- When service is supplied on different goods –

Considering the ratio of the invoice value of goods in each States or Union territory, on which service is performed, as the ratio of the value of the service performed in each State or Union territory.

8.3 - Services related to immovable property - Section 13(4)

Section 13(4) covers the services related to immovable property –

- services supplied by experts and estate agents,
- accommodation service by a hotel, inn, guest house, club or campsite,
- grant of rights to use immovable property,
- services for carrying out or co-ordination of construction work, including that of architects or interior decorators.

Place of supply in the above cases –

1. ***General rule –***

   Place of supply of service shall be the ***location at which the immovable property is located or intended to be located.***

2. ***Immovable property is located in more than one state or union territory –***

   Where the immovable property is located in more than one State or Union territory, the supply of services shall be treated as –

   - made in ***each of the respective States or Union territories,***
   - in ***proportion to the value*** for services separately collected or determined
   - in ***terms of the contract or agreement*** entered into in this regard.

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However, ***in the absence of such contract or agreement,*** the place of supply shall be determined as per provisions of ***Rule 8.***

Rule 8 prescribes that the place of supply shall be determined in the ***same manner as determined in Rule 4*** (discussed in Section 12(3)) –

a. In case of services provided by way of ***lodging accommodation*** by hotel, inn, guest house etc. and its ancillary services –

   Number of nights stayed in such property.

b. Services provided by way of accommodation in any immovable property for ***organising any marriage or reception*** etc. and in cases of ***supply of accommodation*** by a hotel, inn, guest house, club or campsite, where such ***property is a single property located in 2 or more contiguous States or Union territories*** or any other ancilliary service –

   Area of the immovable property lying in each State or Union territory.

c. Services by way of ***lodging accommodation by a house boat or vessel*** and its ancillary services –

   Time spent by the boat or vessel in each such State or Union territories as declared by the service provider.

8.4 - Services related to admission or organisation of an event - Section 13(5)

Section 13(5) covers ***admission*** to or ***organisation*** of a –

- Cultural event,
- Artistic event,
- Sporting event,
- Scientific event,
- educational event or
- entertainment event, or
- celebration,
- conference,
- fair,
- exhibition or
- similar events, and
- services ancillary to such admission or organisation

In the above cases, ***place of supply shall be the place where the event is actually held***.

In case the ***event is held in more than one state*** and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in ***each of the respective States in proportion to the value for services*** separately collected or determined in ***terms of the contract or agreement*** entered into in this regard.

In the ***absence of contract or agreement***, the value in determined as per ***Rule 9***. Rule 9 says that the value shall be determined as per Rule 5 (discussed in Section 12(7)) i.e., apportioned on the basis of ***Generally Accepted Accounting Principles (GAAPs)***.

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8.5 - Services in taxable territory - Section 13(6)

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

Example –

Mr. Chandler of USA is contacted to design a guesthouse in Dubai and in India, what shall be the place of supply in such case?

In this case, the service is supplied in more than one location and one of them is in taxable territory. Thus, the place of supply for the entire service shall be India.

8.6 - Services in more than one state or union territory - Section 13(7)

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

In the absence of such contract or agreement, the value shall be determined as per the rules prescribed in those sub-sections i.e., Rule 7, 8 or 9.

8.7 - Services by banking or financial company and intermediaries - Section 13(8)

The services covered in Section 13(8) are –

- services supplied by a ***banking company***, or a ***financial institution*** or a ***non-banking financial company, to account holders***, {If it is not provided to account holders then Section 13(8) will not apply and Section 13(2) will apply}
- services by ***intermediaries***,
- services of ***hiring of means of transport*** including yachts but ***excluding aircrafts and vessels*** up to a ***period of 1 month***.

In the above cases, the place of supply shall be the ***location of the supplier of services***.

Note – As per Section 2(13), '***Intermediary***' means –

- a broker, an agent or any other person, by whatever name called,
- who arranges or facilitates the supply of ***goods or services or securities*** between two or more persons,
- but ***does not include a person who supplies*** such goods or services or both or securities ***on his own account***.

Note: Advertising Services provided to Foreign clients is not regarded as intermediary service. Accordingly, POS shall be determined as per Section 13(2) of IGST Act.

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8.8 - Service of transportation of goods - Section 13(9)

With effect from 1.10.2023, Section 13(9) has been omitted. Accordingly, place of supply in above case shall be determined as per Section 13(2).

8.9 - Service of transportation of passengers - Section 13(10)

The place of supply in respect of **passenger transportation services** shall be the place where the ***passenger embarks on the conveyance*** for a continuous journey.

8.10 - Service provided on board a conveyance - Section 13(11)

The place of supply of services provided on board a conveyance during the course of a passenger transport operation including services intended to be wholly or substantially consumed while on board, shall be ***the first scheduled point of departure of that conveyance*** for the journey.

8.11 - OIDAR services - Section 13(12)

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

It shall be noted that the ***person receiving such services*** shall be ***deemed to be located in the taxable territory*** i.e. India, if ***any two*** of the following non-contradictory ***conditions are satisfied –***

- the ***location of address*** presented by the recipient of services through internet ***is in the taxable territory,***
- the ***credit card or debit card or store value card or charge card or smart card*** or any other card by which the recipient of services settles payment has been ***issued in the taxable territory,***
- the ***billing address*** of the recipient of services is in the taxable territory,
- the ***internet protocol (IP) address of the device used*** by the recipient of services is in the taxable territory,
- the ***bank of the recipient*** of services in which the ***account used for payment*** is maintained is in the taxable territory,
- the ***country code of the subscriber identity module (SIM) card*** used by the recipient of services is of taxable territory,
- the ***location of the fixed land line*** through which the service is received by the recipient is in the taxable territory.

Note – As per Section 2(17), ***Online information and database access or retrieval (OIDAR)*** services means services whose –

- ***delivery is mediated by information technology*** over the internet or an electronic network and
- the nature of which renders their supply essentially automated and
- ***involving minimal human intervention*** and
- ***impossible*** to ensure ***in the absence of information technology*** and
- includes electronic services such as –
    - advertising on the internet,
    - providing cloud services,
    - provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet,
    - providing data or information, retrievable or otherwise, to any person in electronic form through a computer network,
    - online supplies of digital content (movies, television shows, music and etc.),
    - digital data storage; and
    - online gaming.

A detailed note on OIDAR is given in the chapter – imports and exports under GST.

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8.12 - Notified services - Section 13(13)

In order to prevent double taxation or non-taxation of the supply of a service, the Government shall have the power to notify any description of services or circumstances in which the ***place of supply shall be the place of effective use and enjoyment of a service.***

The services notified under Section 13(13) are as follows –

1. Research and development services related to pharmaceutical sector –

a. ***Integrated discovery and development –***

This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.

b. ***Evaluation of the efficacy of new chemical or biological entities in animal models of disease –***

This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non- taxable territory.

c. ***Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays –***

This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions.

d. ***Drug metabolism and pharmacokinetics of new chemical entities –***

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This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.

e. ***Safety Assessment/ Toxicology –***

Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.

f. ***Stability studies –***

Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.

g. ***Bio-equivalence and Bioavailability Studies –***

Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from

a drug product into the systemic circulation and becomes available at the site of action.

h. ***Clinical trials –***
The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage.

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

Place of supply –
In the above cases, when the services are ***supplied by a person located in taxable territory to a person located in the non- taxable territory***, the place of supply shall be the ***location of the recipient*** of services subject to fulfilment of the following conditions –

- supply of services from the taxable territory is provided as per a contract between the service provider located in taxable territory and a service recipient located in non–taxable territory.
- Such supply of services fulfils all other condition in the definition of export of services except the condition that the place of supply is outside India.

2. ***B2B maintenance, repair and overhaul services of aircrafts or aircraft engines/components/parts –***

Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.

The ***place of supply*** of services shall be the location of the recipient of service.

9. SPECIAL PROVISION FOR TAXABILITY OF SUPPLY OF ONLINE MONEY GAMING BY A PERSON LOCATED OUTSIDE THE TAXABLE TERRITORY TO A PERSON IN INDIA - SECTION 14A

Consequent to the online money gaming becoming taxable by virtue of the amendment in Schedule III of the CGST Act by the CGST Amendment Act, 2023, there was a need for special provisions to be introduced for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India, inter-alia, providing for:

- liability on the said supplier for payment of IGST on such supply.
- single registration of the said supplier through the Simplified Registration Scheme [as referred in section 14 of the IGST Act].

- power of the Government for blocking of access by the public to any information generated, transmitted. received or hosted in any computer resource used for supply of online money gaming by such supplier, in case of failure to comply with the above provisions.

Resultantly, with effect from 01.10.2023, ***new section 14A has been introduced*** by the IGST Amendment Act, 2023 which provides as follows:

A supplier of online money gaming, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay IGST on such supply.

However, any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier.

Further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

In case of ***failure to comply*** with the above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the IGST Act.

10.CIRCULARS

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For all **online/digital services (including OIDAR and OTT)** supplied to **unregistered persons**, suppliers must **record the recipient's State name** on invoice and treat it as **address on record**, thereby ensuring **correct place of supply = recipient's location**, not supplier's

Supplier's Responsibility

1. **Collect recipient's State details** before supply.
2. **Mention recipient's State** on invoice (irrespective of value).
3. **Declare correct place of supply** (recipient's State) in **GSTR-1 / 1A**.
4. **Implement a mechanism** to ensure collection of State information.

ILLUSTRATIONS

Illustration 1.1

Mr. Z, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US.

With reference to the provisions of GST law, examine whether the said activity of supplyof goods by Mr. Z to customer in US is taxable under GST.

If yes, determine the place of supply of the same.

Illustration 1.2

Priyank of Pune, Maharashtra enters into an agreement to sell goods to Bisht of Bareilly,Uttar Pradesh.

- While the goods were being packed in Pune godown of Priyank, Bisht got an orderfrom Sahil of Shimoga, Karnataka for the said goods.
- Bisht agreed to supply the said goods to Sahil and asked Priyank to deliver thegoods to Sahil at Shimoga.

You are required to determine the place of supply(ies) in the above situation.

Illustration 1.3

The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states.

What will be the place of supply of construction services?

Illustration 1.4

Quickdeal Enterprises (Ahmednagar, Gujarat) opens a new branch office at Hissar,Haryana.

It purchases a building for office from Ruhani Builders (Hissar) along with pre-installedoffice furniture and fixtures.

Determine place of supply of the pre-installed office furniture and fixtures.

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Illustration 2

Musicera Pvt. Ltd., owned by Nitish Daani - a famous classical singer - wishes toorganise a 'Nitish Daani Music Concert' in Gurugram (Haryana).

- Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising thesaid music concert at an agreed consideration of Rs.10,00,000.
- Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered inHaryana) for holding the music concert, for a lump sum consideration of Rs.4,00,000.
- Musicera Pvt. Ltd. fixes the entry fee to the music concert at Rs.5,000.
- 400 tickets for 'Nitish Daani Music Concert' are sold.
- You are required to determine the CGST and SGST or IGST liability, as the case maybe, in respect of the supplie(s) involved in the given scenario.
- Will your answer be different if the price per ticket is fixed at Rs.450?Note: Rate of CGST and SGST is 9% each and IGST is 18%.

All the amounts given above are exclusive of taxes, wherever applicable

Illustration 3

Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organising the grand party for the launch of its new product at Bangalore.Damani Industries is registered in Mumbai.
Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.
Will your answer be different if the product launch party is organised at Dubai?

Illustration 4

Supra Events, an event management company at New Delhi, organizes an award function for Chirag Diamond Merchants of Varanasi (registered in U.P.), at Mumbai.

Determine place of supply of the service supplied by Supra Events.

Will your answer be different, if the award function is organised at Mauritius instead ofMumbai?

Illustration 5

Mr. Murthy, an unregistered person and a resident of Pune, hires the services of M/s SunLtd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru.

(i) Determine the place of supply of services provided by M/s Sun Ltd.
(ii) What would your answer be in case the product launch takes place in Bangkok?

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What would your answer be in case Mr. Murthy is a registered person and productlaunches take place in Bengaluru and Bangkok?

Illustration 6

Determine the place of supply for the following independent cases under the IGST Act,2017:

- Mega Events, an event management company at Kolkata, organises two award functions for Shagun Jewellers of Chennai (Registered in Chennai) at New Delhi andat Singapore.
- Crown Planners (Bengaluru) is hired by Dr. Banta (unregistered person based inKochi) to plan and organise his son's wedding at Mumbai.

Will your answer be different if the wedding is to take place at Malaysia?

Illustration 7

PQ', a statutory body, deals with the all the advertisement and publicity of the Government. It has issued a release order to 'Moon Plus' channel (registered in State A') for telecasting an advertisement relating to one of the schemes of the Government in themonth of September 20XX.

- The advertisement will be telecasted in the States of 'A', 'B', 'C', 'D' and 'E'. The totalvalue of the service contract entered into between Moon Plus' and "PQ' is 10,00,000(exclusive of GST).
- You are required to determine the place of supply of the services in the instant caseas also the value of supply attributable to the States of 'A', 'B, C, D' and 'E'.

- Further, compute the GST liability (CGST & SGST or IGST, as the case may be) of 'Moon Plus' as also advise it as to whether it should issue one invoice for the entirecontract value or separate State-wise invoices.

The other relevant information is given hereunder:

States	Viewership figures of 'Moon Plus' channelin the last week of June 20XX as provided by the Broadcast Audience Research Council	
A	50,000	
B + C	1,00,000	
D + E	50,000	
States	**Population as per census (in crores)**	
A	50	
B	180	
C	20	
D	100	
E	25	
CGST	**SGST**	**IGST**
9%	9%	18%

Illustration 8

Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties

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Determine the Place of supply in the transaction below as per the provisions of GST law in the following independent situations

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Property situated at
1	Delhi	Maharashtra	New York (USA)
2	Delhi	New York	Paris (France)

Explain the relevant provisions of law to support your conclusions

Illustration 9

ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation toprocuring goods from India.

- The company identifies the prospective vendor, reviews product quality andpricing and then shares the vendor details with the foreign customer.
- The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods.
- ABC Pvt. Ltd. charges its foreign customer cost **plus** 10% mark up for servicesprovided by it.
- For the month of December, company has charged US $ 1,00,000 (exclusive ofGST) to its foreign customer for the services provided by it.

With reference to the provisions of GST law, examine whether the company is liable topay IGST or CGST and SGST?

Note:

1. GST@ 18% is applicable on the supply of support service provided by ABC Pvt.Ltd.
2. Rate of exchange = Rs. 65 per US $

Illustration 10.1

What is the place of supply where the goods or services are supplied on board aconveyance, such as a vessel, an aircraft, a train, or a motor vehicle?

Illustration 10.2

The provider of AMC service outside India has entered into an agreement for an Aircraftcompany PQR Ltd. located in India.

Service provider provides, repair service to the aircraft when it was in India.

- The place of supply of service in this case is:
  a. Outside India b. In India

Illustration 10.3

If XYZ Ltd., a company based out of a Bangalore awards online maintenance contract of its server located in Mumbai office to Y Inc., a company based out of USA and as per theterms of the online maintenance, X Inc. shall be required to perform regular maintenance from USA using internet.

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Place of Supply is……

a. Bangalore
b. Mumbai
c. USA

7. VALUE OF SUPPLY

Contents

- Value of supply made to unrelated person with price as sole consideration
- Inclusions to value of supply
- Exclusions to value of supply
- Treatment of discount
- Valuation Rules

1. INTRODUCTION

- GST is payable
  - on supply of goods and / or services for a consideration in the course of or furtherance of business;
  - on certain supplies made without a consideration as specified in Schedule I to the CGST Act.
- GST is an ***ad valorem levy***, i.e., it is levied as a ***percentage of the value of supply*** of goods and/or services,
- ***Section 15*** of the CGST Act provides ***common provisions for determining the value of supply*** of goods and services.
- It provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration for the supply.
- ***When value cannot be determined under section 15*** as also in certain specific cases, the same is determined using ***Chapter IV: Determination of Value of Supply of CGST Rules***.
- Supplies made solely for non-monetary consideration, or for part monetary consideration and part non-monetary consideration, or involving additional consideration, or to related persons, or for specific classes of supply are dealt section 15(4) & (5) read with the Chapter IV: Determination of Value of Supply of CGST Rules.

2. SUPPLIES TO UNRELATED PERSONS WHERE PRICE ID THE SOLE CONSIDERATION – SECTION 15(1)

- When a transaction of supply of goods / services is made

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- between two persons who are not related to each other and
- price is the sole consideration for the supply

the value of supply is the ***Transaction value***.

Transaction Value *– means the price actually paid or payable for the said supply of goods or services or both.*

- It includes the amount already paid at the time the supply is being valued for tax, as well as the amount payable and not yet paid at that time.
- The word 'payable' refers to price that is agreed to be paid for the goods / services.
- Persons including legal persons deemed as related persons if.
  - Such persons are officers or directors of one another's business
  - Such persons are legally recognised partners in business
  - Such persons are employer & employee
  - A third person controls (directly/indirectly) or own/ holds ≥ 25% voting stock/ shares of both of them
  - One of them controls (directly/indirectly) the other
  - A third person control (directly / indirectly) both of them
  - Such persons together control (directly/indirectly) a third person
  - Such persons are members of the same family
  - One of them is the sole agent/sole distributor/sole concessionaire of the other.
- ***Consideration [Sec 2(31)*** - in relation to the supply of goods or services or both includes –
  - any ***payment*** made or to be made, whether in ***money or otherwise***,
  - the ***monetary value of any act*** or forbearance,
  - in respect of, in response to, or for the inducement of, ***the supply*** of goods or services or both,
  - whether by the ***recipient or by any other person***
  - but shall ***not include any subsidy*** given by the Central Government or a State Government
  - A ***deposit*** given ***shall not be considered as payment*** made for such supply
  - ***unless the supplier applies*** such deposit as consideration for the said supply.

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3. INCLUSIONS IN VALUE - SECTION 15(2)

3.1 - Taxes other than GST & GST Compensation Cess - Section 15(2)(a)

- Any taxes, duties, cesses, fees and charges levied under any law for the time being in force ***except the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier***, are includible in the value of supply.
- In case of inter-State sale liable to IGST, the value of supply will include taxes other than IGST and the GST Compensation Cess in terms of third proviso to section 20 of IGST Act.
- In effect, ***all the taxes, duties etc. which are not subsumed in GST form part of the taxable value*** for the purpose of levying GST.
- For instance, if a supplier of goods pays municipal tax in relation to the goods being supplied and charges the same separately, such tax will form part of the value of supply.
- For the purpose of determination of value of supply under GST, tax collected at source ***(TCS) under the provisions of the Income Tax Act, 1961 would not be includible*** as it is an interim levy not having the character of tax. [vide Circular No. 76/50/2018 GST dated 31.12.2018 (amended vide corrigendum dated 7.03.2019)]

3.2 - Payments made to third parties - Section 15(2)(b)

- Payments made to third parties by the recipient on behalf of the supplier in relation to the supply is included in the value of supply.

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- If the customer makes direct payment of some of the supplier's liabilities to the third parties, and the supplier does not include this amount in his bill, it will still form part of the value of the supply.
- Amount paid by the recipient to third parties will be added to the value under this clause only when the supplier is under ***contractual liability*** to make payment to such third parties and the said payment is in relation to such supply.

3.3 - Incidental expenses - Section 15(2)(c)

- Incidental expenses, such as, commission and packing charged by the supplier or anything else done by the supplier in relation to the supply at the time of or before delivery of goods or supply of services must be added to value.
- Examples of Incidental expenses which are added to the value of supply if billed to the recipient of supply -
    - Commission
    - Inspection or certification charges
    - Installation and testing charges at the recipient's site
    - Weighment charges, loading charges, designing charges etc. incurred before/at the time of supply
    - Outward freight, transit insurance - Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport and insurance, the contract of

supply becomes a composite supply; and GST is payable thereon at the same rate as applicable for the relevant goods. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight and insurance, the same will not be included in the value of supply of goods.

3.4 - Interest, late fee or penalty for delayed payment - Section 15(2)(d)

- Any interest, late fee, penalty or any other charges charged for delay in payment by supplier from the recipient shall form part of the value of supply.
- ***Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier.***

3.5 - Subsidies - Section 15(2)(e)

- Subsidy is a sum of money given to keep the price of a service or commodity low.
- only subsidies directly linked to the price of goods/services are added to the value. ***Except*** those given by the
  - State Government or
  - Central Government
- If the subsidy is given by a person or entity other than the State or Central Government, it does not lower the value.

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4. EXCLUSION OF DISCOUNTS FROM VALUE - SECTION 15(3)

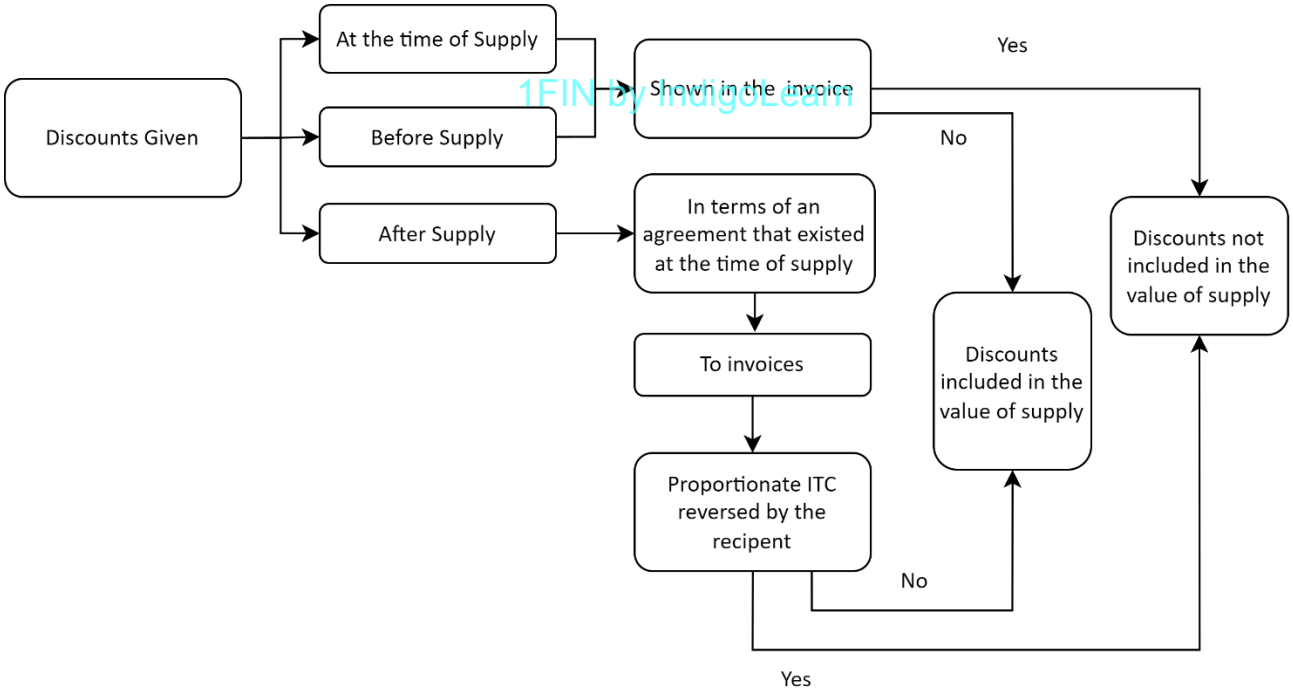
- Numerous kinds of discounts are given by the suppliers to their customers namely, trade discounts, cash discounts, quantity/volume/performance discounts etc.
- Not all discounts offered by the supplier to their customers are allowed as a deduction from the value. Only such discounts which satisfy the conditions prescribed in section 15(3), are allowed as deduction from the value.
- The essence of the conditions prescribed in section 15(3) is that the price as established at the time of supply should form the basis of value.

4.1 - Discounts given before or at the time of supply and shown in the invoice. - Sec 15(3)(a)

- Example for such discount can be discounts that are offered for making the payment at the time of supply itself. Such discounts are thus, recoded in the invoice and thus, GST is charged on the gross value less discount recorded in the invoice.
- No Claim Bonus is excluded i.e., GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice.

4.2 - Post supply discounts - Sec 15(3)(b)

- In case of quantity/volume/performance/cash discount, the supplier is not aware before/at the time of supply as to whether the buyer would purchase the requisite quantity within the stipulated time or would make the payment within the stipulated time. Therefore, in such cases, the discount cannot be recorded in the invoice.
- In such cases, initially the GST is paid on the gross value indicated in the invoice without considering the discount.
- The supplier, however, passes the discount to the buyers subsequently by issuing credit notes.
- Post supply discounts, i.e., ***the discounts that are given after supply is made***, are ***allowed as a deduction from the value of supply*** if the following two conditions are satisfied:
    - ***Discount is in terms of an agreement*** that existed at the time of supply and can be worked out invoice-wise; ***and***
    - ***Proportionate input tax credit is reversed by the recipient*** - The buyer would have availed input tax credit (ITC) of GST payable on the gross value specified in the invoice. Thus, when a credit note is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount.



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In order to prove the above, the following system is adopted practically:

- **For tax amounts exceeding Rs.5 lakhs**: Supplier shall obtain a certificate from the recipients CA/CMA certifying ITC reversal
- **For tax amounts not exceeding Rs.5 lakhs:** Supplier shall obtain an undertaking or certificate from the recipient

6.3 Other discounts

- ***Staggered discounts (Buy more, Save more offers):***
  - In case of staggered discounts, rate of discount increases with increase in purchase volume.
  - Such discounts are shown on the invoice itself.
  - Such discounts are excluded to determine the value of supply.
- ***Periodic/year ending discounts/volume discounts:***
  - These discounts are offered by the suppliers to their stockists, etc. Such discounts are established in terms of an agreement entered into at or before the time of supply
  - though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been affected and generally at the year end.
  - Such discounts are passed on by the supplier through credit notes.
  - Such discounts are excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3), including the reversal of ITC by the recipient of the supply as is attributable to the discount.
- ***Secondary discounts:***
  - These are the discounts which are not known at the time of supply or are offered after the supply is already over.
  - Such discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied.

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It may be noted that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in section 15(3)(b) are not satisfied.

5. WHEN TRANSACTION VALUE CANNOT BE APPLIED

- Section 15(4) lays down that where sub-section (1) is not applicable, that is,
  - if the transaction is with a related party, and/or
  - price is not the sole consideration for the supply of goods / services,
  - then the value will be determined in the manner as stipulated in the rules for valuation
- Further, section 15(5) lays down that in respect of certain notified supplies also, the value will be determined in the manner as stipulated in the rules for valuation.

6. SUPPLY OF ONLINE MONEY GAMING, ONLINE GAMING OTHER THAN ONLINE MONEY GAMING AND ACTIONABLE CLAIMS IN CASINOS - SECTION 15(5)

With effect from 01.10.2023, supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos have been notified under section 15(5) for prescribing the manner of determination of the value of these supplies under the CGST Rules. ***[Notification No. 49/2023 CT dated 29.09.2023]***

Rate of GST on Specified Actionable Claims is 40%

Online gaming falls under OIDAR Services but online money gaming treated as Specified Actionable Claims and treated as goods. Applicable GST rate is 40%, in case of Specified Actionable claims. However, in case of OIDAR Services it is 18%

7. DETERMINATION OF VALUE OF SUPPLY OF CGST RULES

1. Value, if consideration is not wholly in money – Rule 27

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall:

(a) ***General Value*** = Open market value of such supply;

(b) If open market value is not available Value = Consideration in money + Any such further amount in money as is equivalent to consideration not in money if such amount is known at time of supply;

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(c) If value of supply is not determinable under (a) or (b) Value = Value of supply of goods or services or both of like kind and quality;

(d) If value is not determinable under (a) to (c)

Value = Consideration in money + Such further amount in money that is equivalent to consideration not in money as determined, sequentially, by rule 30 or 31.

Illustration:

1. Where a new phone is supplied for ₹ 20,000 along with the exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000, the open market value of the new phone is ₹ 24,000.

   Where a laptop is supplied for ₹ 40,000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is ₹ 4,000 but the open market value of the laptop is not known, the value of the supply of laptop is ₹ 44,000.

Meaning of open market value & like kind/quality supplies:

(a) "Open market value" of a supply of goods or services or both means —

- the full value in money to obtain such supply at the same time when the supply being valued is made,

- Excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction,
- Where the supplier and the recipient of the supply are not related and price is the sole consideration.

(b) "Supply of goods or services or both of like kind and quality" means —

- Any other supply of goods or services or both
- Made under similar circumstances
- That —
- In respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, Is the same as, or closely or substantially resembles, that supply of goods or services or both.

2. Value of supply between distinct or related persons, other than through an agent {Rule 28}

The value of the supply of goods or services or both —

- Between distinct persons as specified in sec. 25(4)/(5) (already discussed under 'person') or
- Where the supplier and recipient are related,
- Other than where the supply is made through an agent, shall be,

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(a) General Value = Open market value of such supply;

(b) If open market value is not available Value = Value of supply of goods or services of like kind and quality;

(c) If value of supply is not determinable under (a) or (b) Value = Value as determined, sequentially, by rule 30 or 31.

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

Invoice value acceptable, if recipient eligible for full credit: Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services. This point is applicable even in case of import of services.

3. Value of supply of goods made or received through an agent {Rule 29}

The value of supply of goods between the principal and his agent shall be:

Case	Value

(a) General	Value = i. Open market value of goods being supplied, or ii. At option of supplier, 90% of price charged for — ○ Supply of goods of like kind and quality ○ By recipient ○ To his customer not being a related person, ○ Where the goods are intended for further supply by the said recipient. ***Illustration:*** If a principal supplies Pista to his agent and agent is supplying Pista of like kind and quality in subsequent supplies at ₹5,000 per quintal on day of supply. Another independent supplier supplies Pista of like kind and quality to said agent at the price
(b) if value is not determinable in (a)	Value = Determined by application of rule 30 or rule 31 in that order.

4. Value based on cost {Rule 30} - Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be 110% of the Cost of production or manufacture or cost of acquisition of such goods or Cost of provision of such services.

5. Residual method (Best judgment – Rule 31) - Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 and these rules.

6. On Lottery, Betting, Gambling and Horse Racing (Rule 31A)

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Supply	Value
Supply of Lottery by the Organising State (State Government supplying lottery tickets within its own territory or any other state) GST Rate = 40%	**Higher of the two amounts to be deemed as the value** [Price printed on ticket OR the price as notified in the Official Gazette by the organising State] x 100/140
Supply of Actionable Claim (In the form of chance to win in Betting, Gambling or Horse Racing in a Race Club)	100% of the face value of the bet or the amount paid into the totalisator

Services — Rule 30 may be disregarded: In case of supply of services, the supplier may opt for this rule, disregarding rule 30.

7. Value of supply in case of online gaming including online money gaming (Rule 31B)

The value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be ***the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player.***

However, ***any amount returned or refunded by the supplier*** to the player for any reasons whatsoever, ***including player not using the amount paid or deposited with the supplier*** for participating in any event, ***shall not be deductible*** from the value of supply of online money gaming.

8. Value of supply of actionable claims in case of casino (Rule 31C)

The value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

i. ***purchase*** of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

ii. ***participating*** in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

However, any ***amount returned/refunded by the casino to the player*** on return of token, coins, chips, or tickets, as the case may be, or otherwise, ***shall not be deductible*** from the value of the supply of actionable claims in casino.

Explanation. - For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

[Effective from 01.10.2023]

[Notification No. 45/2023 CT dated 06.09.2023 and Notification No. 51/2023 CT dated 29.09.2023]

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9. Deemed value in certain supplies {Rule 32} - Notwithstanding anything contained in the Act or in these rules, the value in respect of supplies specified below shall be determined in the manner provided hereinafter

Supply of services in relation to purchase or sale of foreign currency, including money changing –

Option 1 – Actual Value:

For a currency, when exchanged from, or to, Indian Rupees (₹)	Value = (Difference in buying/selling rate and RBI reference rate for that currency at that time) x Total units of currency
If RBI reference rate for a currency is not available	Value = 1% of gross amount of Indian Rupees provided or received by person changing money
If neither of the currencies exchanged is Indian Rupee	Value = 1% of lesser of two amounts, person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

Option 2 - Deemed Value:

A person supplying services may exercise option to ascertain value in terms of this option for a financial year and such option shall not be withdrawn during the remaining part of that financial year. At the option of supplier of services, the value in relation to supply of foreign currency, including money changing, shall be deemed to be:

Gross amount of Currency exchanged per transaction	Value
Up to ₹ 1,00,000	1% of currency exchanged or ₹ 250, whichever is higher
Exceeds ₹ 1,00,000 but up to ₹ 10,00,000	₹ 1,000 + 0.5% of currency exchanged for exceeding ₹ 1,00,000 and up to ₹10,00,000
Exceeds ₹ 10,00,000	₹ 5,500 + 0.1% of currency exchanged exceeding ₹ 10,00,000; subject to maximum of ₹ 60,000

Services of booking of air tickets by an air travel agent –

5% of basic fare in case of domestic bookings, + 10% of the basic fare in the case of international bookings of passage for travel by air.

"Basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

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Services in relation to life insurance business:

Case	Value
Entire premium paid by the policy holder is only towards the risk cover in life insurance	Full premium
If amount invested in savings is intimated to policy holder at time of supply	Gross premium charged from a policy holder less Amount allocated for investment, or savings on behalf of the policy holder
Single premium annuity policies (other than above)	10% of single premium charged from policy holder
In all other cases	25% of premium charged from policy holder in first year and 12.5% of premium charged from policy holder in subsequent years

Dealing in buying and selling of second-hand goods (as such or after minor processing without changing nature of goods) & no ITC availed on such purchases -

- Value of supply =
    - The difference between the selling price and purchase price and

- Where the value of such supply is negative it shall be ignored i.e., Actual Margin or NIL

whichever is higher.

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

Token, or voucher, or coupon, or stamp (other than postage stamp) redeemable against a supply of goods or services or both –

Value = Money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

Services by notified class of service provider –

Value of taxable services provided by such class of service providers as may be notified by the Central Government on the recommendations of the Council between distinct persons as referred to in section 25, other than those where input tax credit is not available u/s 17(5), shall be NIL.

10. Exclusion of value of supply of services in case of pure agent {Rule 33} –

Notwithstanding anything contained in these rules, expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if all the following conditions are satisfied, namely:

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i. The supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party for the services procured as the contract for supply made by third party is between third party and the recipient of supply;

ii. The recipient of supply uses the services so procured by the supplier service provider in his capacity as pure agent of the recipient of supply;

iii. Recipient of supply is liable to make payment to third party;

iv. The recipient of supply authorises the supplier to make payment on his behalf;

v. The recipient of supply knows that the services for which payment has been made by the supplier shall be provided by the third party;

vi. The payment made by the supplier on behalf of the recipient of supply has been separately indicated in the invoice issued by the supplier to the recipient of service;

vii. The supplier recover from the recipient of supply only such amount as has been paid by him to the third party; and

viii. The services procured by the supplier from the third party as a pure agent of the recipient of supply are in addition to the supply he provides on his own account.

Pure agent: For the purposes of this rule, "pure agent" means a person who —

a. Enter into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
b. Neither intends to hold nor holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply;
c. Does not use for his own interest such goods or services so procured; and
d. Receives only the actual amount incurred to procure such goods or services.

Illustration:

Corporate services firm X is engaged to handle the legal work pertaining to the incorporation of Company Y. Other than its service fees, X also recover from Y, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on Y. X is merely acting as a pure agent in the payment of those fees. Therefore, X's recovery of such expenses is a disbursement and not part of the value of supply made by X to Y.

11. Currency exchange rate {Rule 34} –

The rate of exchange for determination of value of taxable goods or services or both shall be —

- The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

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12. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax. {Rule 35}

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-

Tax amount = Total amount * Rate of tax / 100 + rate of tax

8. CLARIFICATIONS

8.1 - Tax to be paid on specified actionable claims at the time of receipt of payment for such supplies by the suppliers

Notification No. 66/2017 CT dated 15.11.2017 was earlier issued to exempt all registered persons from the requirement of payment of tax at the time of receipt of advances in case of supply of goods and provides for payment of tax in such cases at the time of supply as specified in section 12(2)(a).

With effect from 01.10.2023, said notification has been amended to ***exclude registered persons making supply of specified actionable claims*** [as discussed in Chapter 2 - Supply under GST] from the said exemption, so that in case of specified actionable claims, the tax can be paid at the time of

receipt of payment for such supplies by the suppliers. ***[Notification No. 50/2023 CT dated 29.09.2023]***

8.2 - Clarification on Taxability and valuation of personal guarantee by Directors and corporate guarantee by related person, for the company.

Issue: Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not?

Clarification: Since director and company are related persons, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration [in terms of section 7(1)(c) read with para 2 of Schedule I]. Value will be open market value (OMV) of such supply [in terms of rule 28].

However, as per the mandate provided by the RBI Guidelines in this regard, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits, except in exceptional cases.

Consequently, there is no question of such supply/ transaction having any OMV. Accordingly, it is clarified that OMV of the said transaction/ supply may be treated as zero and therefore, no tax is payable on such supply of service by the director to the company. However, in exceptional cases, where remuneration is payable to the director, the taxable value of such supply of service shall be the remuneration/ consideration provided to such guarantor by the company, directly or indirectly.

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Exceptional cases: Instances where consideration is payable to the director may include cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, are paid remuneration/ consideration in any manner, directly or indirectly.

No tax is payable on supply of service i.e. of providing personal guarantee by the Director without any consideration, to the bank/ financial institutions for sanctioning of credit facilities.

Issue: Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services?

Clarification: In that case the activity is to be treated as a supply of service between related parties even when made without any consideration [in terms of section 7(1)(c) read with para 2 of Schedule I]. ***In such cases***, the taxable value will be determined as per the newly inserted sub-rule (2) to rule 28 irrespective of whether full ITC is available to the recipient of services or not.

Value of supply of service of providing corporate guarantee by a person on behalf of another related person, or by the holding company for its subsidiary company shall be: Higher of: 1% of the amount of such guarantee offered, or actual consideration.

8.3 - Clarification regarding internally generated services - where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs.

Issue: In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full ITC is available to the concerned BOs?

Clarification: The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 read with section 15(4). As per rule 28(a), the value of supply between distinct persons shall be the open market value (OMV) of such supply. The second proviso to rule 28 provides that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the OMV of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be OMV of such services, if the recipient BO is eligible for full ITC. Accordingly, in cases where full ITC is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the OMV of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV in terms of second proviso to rule 28

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In respect of internally generated services, Where full ITC is available to a BO, the value declared on the invoice by HO shall be deemed to be the OMV, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services. If HO has not issued a tax invoice to the BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV.

Issue: In respect of internally generated services provided by the HO to BOs, in cases where full ITC is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs?

In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required

to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.

ILLUSTRATIONS

Illustration 1

AKJ Foods Pvt. Ltd. gets an order for supply of processed food from a customer.

The customer wants the consignment tested for gluten or specified chemical residues.AKJ Foods Pvt. Ltd. does the testing fee for the same from the customer.

AKJ Foods Pvt. Ltd. argues that such testing fees should not form part of theconsideration for the sale is a separate activity.

Is his argument correct in the light of section 15?

Illustration 2

A philanthropic association makes a substantial donation each year to a reputed private management institution to substitute the education of law income group students who have gained admission there.

The fee for these individuals is reduced thereby, coming to Rs.3 lakh a year compared toRs.5 lakh a year for other students.

What would be the value of the service of coaching and instruction provided by the institution to the low-income group students?

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Illustration 3

Mezda Banners, an advertising firm, gives an interest-free credit period of 30 days forpayment by the customer.

Its customer ABC paid for the supply, 32 days after the supply of service. Mezda Bannerswaived the interest payable for delay of two days.

The Department wants to add interest for two days as per contract. Should notionalinterest be added to the value?

Illustration 4

Crunch Bakery Products Ltd sells biscuits and cakes through its dealers, to whom it charges the list price minus standard discount and pays GST accordingly.

When goods remain unsold with the dealers, it offers additional discounts on the stock as an incentive to push the sales.

Can this additional discount be reduced from the price at which the goods were sold and concomitant tax adjustments made?

Illustration 5

Raman Ltd., a registered supplier in Mumbai (Maharashtra), has supplied goods to Sahil Traders and Jaggi Motors Ltd. located in Ahmedabad (Gujarat) and Pune (Maharashtra) respectively. Raman Ltd. has furnished the following details for the current month:

S.No.	Particulars	Sahil Traders (Rs.)	Jaggi Motors (Rs.)
(i)	Price of the goods (including GST)	20,000	15,000
(ii)	Packing Charges	600	
(iii)	Commission	400	
(iv)	Weighment Charges		1,000
(v)	Discount forprompt payment (recorded in the invoice)		500

Items given in points (ii) to (v) have not been considered while arriving at the priceof the goods given in point (i) above.

Compute the GST liability (CGST & SGST or IGST as the case may be) of Raman Ltd. for the given month. Assume the rates of taxes to be as under:

Particulars	Rate of Tax
Central Tax (CGST)	9%
State Tax (SGST)	9%
Integrated Tax (IGST)	18%

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Illustration 6

Red Pepper Ltd., Delhi, a registered supplier, is manufacturing taxable goods. It provides the following details of taxable Inter-State supply made by it for the month of March, 20XX.

Particulars	Amount (Rs.)
List price of goods supplied inter-state (exclusive of taxes)	15,00,000
Subsidy received by Central Govt. for supply of taxable goods to Govt.School	2,10,000
Subsidy received by an NGO for supply of taxable goods to an old agehome	50,000
Tax levied by Municipal Authority	20,000
Packing charges	15,000
Late fee paid by the recipient of supply for delayed payment of invoice	6,000

- The list price of the goods takes into account the two subsidies received.
- However, the other charges / taxes/ fees are charged to the customers over andabove the list price.

Calculate the value of taxable supply made by M/s Red Pepper Ltd. for the month ofMarch 20XX. Rate of IGST is 18%.

Illustration 7

Kamal Book Depot, a wholesaler of stationery items, registered in Mumbai, has received order for supply of stationery items worth Rs. 2,00,000 on 12th November 20XX from another local registered dealer, Mr. Mehta, Mumbai.

Kamal Book Depot charged the following additional expenses from Mr. Mehta:

	Particulars	Amount (Rs.)
(i)	Packing charges	5,000
(ii)	Freight & Cartage	2,000
(iii)	Transit Insurance	1,500
(iv)	Extra designing charges	6,000
(v)	Taxes by Municipal Authority	500

- The goods were delivered to Mr. Mehta on 14th November 20XX.
- Since Mr. Mehta was satisfied with the quality of the goods, he made the payment for goods the same day and simultaneously placed another order on Kamal Book Depot for stationery items amounting to Rs.10,00,000 to be delivered in the month of December 20XX**.
- On receipt of second order, Kamal Book Depot allowed a discount of Rs.20,000 on the first order placed by Mr. Mehta
- Compute the GST liability of Kamal Book Depot for the month of November 20XX assuming the rates of GST on the goods supplied as under: (I)CGST 9% & (ii) SGST 9%

Would your answer be different if expenses (i) to (v) given in the table are alreadyincluded in the price of Rs.2,00,000?

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Note:

1. All the amounts given above are exclusive of GST
2. Kamal Book Depot and Mr. Mehta are not related persons and price is the sole consideration of the supply.

** Payment and invoice for the second order will also be made in the month ofDecember only.

Illustration 8

Mr. X, a money changer, has exchanged US $ 10,000 to Indian rupees @ Rs. 64 per US $.Mr. X wants to value the supply in accordance with rule 32(2)(b) of CGST Rules.

Determine the value of supply made by Mr. X.

Illustration 9

Prada Forex Pvt Ltd. registered in Delhi, is a money changer.

Particulars	Rate of Exchange	RBI reference rate
US $ 1,000 are purchased from Nandhi Enterprises	Rs. 68 per $	Rs. 68.60

US $ 2,000 are sold to Meenavathi	Rs. 67.50 per $	Not available

Determine the value of Supply in each of the above case in term of Rule 32(2)(a) andRule 32(2)(b).

Illustration Air Travel Agent

Mr. U is an air travel agent.

Compute the value of supply of service made by him during a month with the help offollowing particulars furnished by him:

Particulars	Basic fare (₹)	Other charges (₹)	Taxes (₹)	Total value of tickets (₹)
Domestic Bookings	1,00,900	9,510	4,990	1,15,400
International Bookings	3,16,880	20,930	15,670	3,53,480

Illustration 10

Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakh from policy holders with respect to life insurance policies in the 2017-18; out of which ₹100 lakh have been allocated for investment on behalf of the policy holders.

Compute the value of supply of life insurance services provided by ALICL:

1. if the amount allocated for investment has been intimated by ALICL to policyholders at the time of supply of service.
2. if the amount allocated for investment has not been intimated by ALICL to policyholders at the time of providing of service.

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Note:

- ALICL has started its operations in the year 2017-18.
- Thus, the entire gross premium of ₹ 180 lakh is the premium for the first year of all the policies.
- ALICL has not issued any single premium annuity policy.

Illustration 11

Dushyant rents out a commercial building owned by him to Bharath for the month of December, for which he charges a rent of ₹ 19,50,000.

- Dushyant pays the maintenance charges of ₹ 1,00,000 (for December) as charged bythe local society. These charges have been reimbursed to him by Bharath.
- Further, Bharath had given ₹ 2,50,000 to Dushyant as interest free refundable
- security deposit.
- Further, Dushyant has paid the municipal taxes of Rs. 2,85,000 which he has notcharged from Bharath.
- You are required to determine the value of supply and the GST liability of Dushyantfor the month of December assuming CGST and SGST rates to be 9% each.

Note: All the amounts given are exclusive of GST.

Illustration 12

Sacrosant Manufacturers Ltd., a manufacturer of bottle caps, is registered in Dhanbad(Jharkhand). It imports a bottle caps making machine from Japan.

- Sacrosant Manufacturers Ltd. avails the services of Jhumroo Logistics, a licensedcustoms broker in Kolkata (West Bengal), in meeting all the legal formalities for getting the said machine cleared from the customs station.
- Sacrosant Manufacturers Ltd. also authorises Jhumroo Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine fromthe customs station and bringing the same to its warehouse at Dhanbad.
- These expenses would be reimbursed by Sacrosant Manufacturers Ltd. to JhumrooLogistics on actual basis.
- In addition, Sacrosant Manufacturers Ltd. will also pay the agency chargesto Jhumroo Logistics for the services rendered by it.
- Jhumroo Logistics raised an invoice in July as follows:

S.No.	Particulars	Amount* (Rs.)
(i)	Agency charges	5,00,000
(ii)	Customs duty on machine	3,80,000
(iii)	Port charges	33,000
(iv)	Dock dues	56,000
(v)	Charges for transport of machine from Kolkata port, WestBengal to Jhumroo Logistics' godown in Asansol, West Bengal	48,000
(vi)	Charges for transport of machine from Jhumroo Logistics'Asansol godown tothe warehouse of Sacrosant Manufacturers Ltd. in Dhanbad, Jharkhand	67,000
(vii)	Unloading of machine at Kolkata port, West Bengal	83,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

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Would your answer be different if Jhumroo Logistics charges ₹ 13,00,000 as a lump sum consideration for clearing the imported machine from the customs station and bringingthe same to the warehouse of Sacrosant Manufacturers Ltd.?

Illustration 13

Dumdum Engineering Private Limited (DEPL), Surat (Gujarat), a supplier of heavy machinery, supplied a machine to Gulati Manufacturers from its godown located in Mumbai, Maharashtra, on 1st January at a price of ₹ 64,00,000 (excluding all taxes).

- Gulati Manufacturers has its corporate office in New Delhi.
- However, the machinery was installed at its manufacturing unit located in Gurugram(Haryana) for which installation and commissioning charges of ₹ 4,80,000 and handling and loading charges of ₹ 1,60,000, were charged by DEPL.
- For every machinery supplied, DEPL receives a grant of ₹ 3,20,000 from its holdingcompany Dharam Ltd.

- Transportation of machinery to the customer's premises is arranged by DEPLthrough a third-party service provider [Goods Transport Agency (GTA)].
- Gulati Manufacturers entered into a separate service contract with the GTA and paid
- the freight of ₹ 50,000 directly to it.
- DEPL offered a cash discount of 2% on the price of the machinery at the time of supply since Gulati Manufacturers agreed to make the payment within 15 days ofthe receipt of the machinery at its premises.
- However, it was agreed that in case Gulati Manufacturers failed to make thepayment within the stipulated time, DEPL would-
- recover the discount given; and
- charge interest @ 1% per month or part of the month on the total amount due (including discount recovered) from Gulati Manufacturers (towards the machinerysupplied) from the date of making the supply till the date of payment.
- Gulati Manufacturers paid the consideration for the machine on 31st March.
- Since the payment was made after the stipulated period of 15 days of the receipt of the machinery, discount given was recovered from it and interest was accordingly charged.
- However, Gulati Manufacturers refused to pay tax on interest and discountrecovered.
- Assume the rates of taxes to be as under:

Supply	CGST rate	SGST rate	IGST rate
Machinery supplied	6%	6%	12%
Service of transportation ofgoods	2.5%	2.5%	5%
Other services involved in theabove supply	9%	9%	18%

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1. The place of supply of the machinery supplied by DEPL is_____and the nature of supply is_____.
   a. Gujarat, intra-State supply
   b. Haryana, inter-State supply
   c. New Delhi, inter-State supply
   d. Maharashtra, inter-State supply

2. The GST liability of DEPL for the month of January is_____(approx.).

   a. 9,46,660
   b. 8,67,840
   c. 9,06,153
   d. 8,29,440

3. The GST liability of DEPL for the month of March is_____(approx.).

   a. 36,343
   b. 36,504
   c. 35,314
   d. Nil

4. Supply of machinery and supply of installation and commissioning services is__ supply. Time

of supply of interest received by DEPL and cashdiscount recovered on account of delayed payment of consideration is _.

a. composite, 31st March
b. composite, 1st January
c. mixed, 1st January
d. mixed, 31st March

5. If the grant of ₹ 3,20,000 received by DEPL had been received from Central Government instead of its holding company Dharam Ltd., with other facts remainingthe same, the GST liability of DEPL for the month of January would have been _____(approx.).

a. 9,46,660
b. 8,67,840
c. 9,06,153
d. 8,29,440

Illustration 14

Mr. Kala is a proprietor of M/s. Kala & Associates (registered under GST) which deals insale/ purchase of second-hand cars. During the current financial year, he effected following intra-State transactions:

Particulars	Purchase price (₹)	Sale price (₹)
Car 1	5,00,000	7,50,000
Car 2	3,00,000	2,75,000
Car 3	6,00,000	6,50,000
Car 4	8,00,000	9,50,000

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- Mr. Kala purchased Car 4 from another registered person who charged GST of ₹ 1,30,000 and accordingly, Mr. Kala has availed the input credit of the same.Determine the GST liability of Mr. Kala assuming the applicable rate of tax as 18%.

a. ₹ 95,000
b. ₹ 1,08,000
c. ₹ 1,30,500
d. Exempt Supply, No GST

Illustration 15

Zindagi Life Insurance Private Limited (ZLICL) has collected a premium from subscribersand it intimates the amount allocated for investment to subscribers at the time of collection of premium.

- During the month of September 2018, it has collected the following receipts:

S.No.	Particulars	Amount (₹)
1	Premium for only Risk cover	25,00,000
2	Premium for new subscribers	40,00,000
3	Renewal Premium	80,00,000
4	Single Premium on annuity policy	1,00,00,000

- All amounts are exclusive of tax.

You are required to compute the value of supply by ZLICL in accordance with GST laws

Illustration 16

M/s. Aircool Ltd., a supplier of air-conditioners, is registered in the State ofMaharashtra.

- It has a policy to gift an air conditioner to its employees [residing in Gujarat] at theend of financial year in terms of the employment contract.
- The company installs such air conditioners at the residence of the employees.
- During the month of March, 20XX, the company installed air conditioners at theresidence of these employees.
- The total open market value of such air conditioners is ₹ 52.50 lakh (excludingGST).
- The tax rate on such air conditioners is 28% (14% CGST, 14% SGST and 28% IGST).Compute

the GST liability of M/s. Aircool Ltd., if any.

a) ₹ 7,35,000 - CGST, ₹ 7,35,000- SGST
b) ₹ 14,70,000 – IGST
c) Nil
d) None of the above

Illustration 17

Mr. James Bond is a registered person under GST in the State of Maharashtra who sellsfootwear to his customers locally within the same State.

1. He has been appointed as an agent by M/s. Toto Shoes Ltd., a company registeredunder GST in the State of Karnataka.
2. During a financial year, M/s. Toto Shoes Ltd., sends taxable goods worth ₹ 5.00 crorefrom its Bengaluru store to Mr. James Bond who sells such goods for ₹ 5.00 crore byraising invoices using the GSTIN of M/s. Toto Shoes Ltd.
   Mr. James Bond receives a commission of ₹ 60.00 lakh from M/s. Toto Shoes (P) Ltd.,during the said financial year.

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Compute the value of supply of Toto Shoes (P) Ltd. and Mr. James Bond for the financialyear.

a) M/s. Toto Shoes (P) Ltd.: Nil and James Bond: ₹ 5.6 crore
b) M/s. Toto Shoes (P) Ltd.: ₹ 5 crore and James Bond: ₹ 5.6 crore
c) M/s. Toto Shoes (P) Ltd.: ₹ 5 crore and James Bond: ₹ 60 lakh
d) None of the above

Illustration 18

Jaskaran, a registered supplier of Delhi, has made the following supplies in the month ofJanuary, 20XX:

S. No.	Particulars	Amount* (Rs.)
(i)	Supply of 20,000 packages at Rs. 30 each to Sukhija Gift Shop inPunjab. [Each package consists of 2 chocolates, 2 fruit juice bottles and apacket of toy balloons]	6,00,000
(ii)	10 generators hired out to Morarji Banquet Halls, Chandigarh. [including cost of transporting the generators (Rs. 1,000 for eachgenerator) from Jaskaran's warehouse to the Morarji Banquet Halls]	2,50,000

(iii)	500 packages each consisting of 1 chocolate and 1 fruit juice bottle given as free gift to Delhi customers on the occasion of Diwali. [Cost of each package is Rs. 12, but the open market value of such package of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the items contained in the package]	
(iv)	Catering services provided free of cost for elder brother's business inaugural function in Delhi. [Cost of providing said services is Rs. 55,000, but the openmarket value of such services and of services of like kind and quality is not available.]	

You are required to determine the GST liability [CGST & SGST and/or IGST, as the casemay be] of Jaskaran for the month of January, 20XX with the help of the following additional information furnished by him for the said period:

1. Penalty of ₹ 10,000 was collected from Sukhija Gift Shop for the payment receivedwith a delay of 10 days.
2. The transportation of the generators from Jaskaran's warehouse to the customer'spremises is arranged by Jaskaran through a Goods Transport Agency (GTA) who pays tax @ 12%.
3. Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGST	IGST
Chocolates	9%	9%	18%
Fruit juice bottles	6%	6%	12%
Toy balloons	2.5%	2.5%	5%
Service of renting of generators	9%	9%	18%
Catering service	9%	9%	18%

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Illustration 19

Royal Manufacturers, a registered supplier of machinery, supplied a special purposemachine to Dharam Furnishers for which it charges a price of Rs. 9,00,000.

Further, it charged the following additional amounts in relation to said supply:

S.No	Particulars	Amount (₹)
1.	Transit insurance	16,500
2.	Packing charges	13,500
3.	Extra charges for designing the machine	30,000
4.	Freight	18,000

Following additional information is also available -

1. Cash discount @ 2% on price of machinery has been allowed to Dharam Furnishersat the time of supply and also, recorded in invoice.
2. GST rate – 18%.

Calculate value of supply of the special purpose machine.

Illustration 20

M/s Jonty India Ltd. a manufacturer of heavy machines registered at Jaipur (Rajasthan) supplied one machine to M/s. Dhanuka Ltd. of Udaipur (Rajasthan) on 05-02-2018 underan invoice of the same date.

- Using the information given below, compute the value of the machine and the GSTpayable (CGST & SGST or IGST as the case may be) in cash for the month of February 2018 by M/s Jonty India Ltd. with appropriate working notes.
- Assume Rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18%respectively.

Sl. No.	Particulars	Amount in Rs.
(i)	The Basic price of the machine (exclusive of taxes and discount).	28,50,000
(ii)	Trade discount is allowed at 3% on the basic price and is shown in the invoice.	85,500
(iii)	Secondary packing (in iron sheets) charges for safe transportation of the machine on the request of buyer.	30,000
(iv)	Design and engineering charges of the machine	90,000
(v)	Tax levied by Municipal Authority on the sale of the machine.	25,000
(vi)	Subsidy received by the supplier from the State Government to encourage manufacture of the machine.	80,000
(vii)	Pre-delivery inspection charges paid to an independent agency in terms of the agreement for supply. The amount was paid by M/s. Dhanuka Ltd.	22,000
(viii)	Interest amount paid by M/s. Dhanuka Ltd. for delay inpayment for the machine.	12,000
	Inward Supplies	
(i)	IGST paid on food items for consumption by employees working in the factory.	8,000
(ii)	SGST and CGST (Rs. 15,000 each) paid on Electricaltransformer used in the manufacturing process.	30,000

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Note:

1. M/s Jonty India Ltd. has no input tax credit balance at the beginning of February, 2018. All the other conditions necessary for availing theeligible input tax credit have been fulfilled.
2. There are no other transactions of supplies during the month of February, 2018.
3. M/s Jonty India Ltd. and M/s. Dhanuka Ltd. are not related persons.

Illustration 21

Laxmi Ltd. of Bhopal (Madhya Pradesh) is a supplier of machinery.

1. Laxmi Ltd. has supplied machinery to PQR Enterprises in Indore (Madhya Pradesh)on 1st

October 2017.

2. The invoice for supply has been issued on 1st October 2017. Thus, the time ofsupply of machinery is 1st October 2017.
3. Laxmi Ltd. and PQR Enterprise are not related.Following information is provided:

- Basic price of machinery excluding all taxes but including design and engineeringcharges of ₹ 10,000 and loading charges of ₹ 20,000, total ₹ 20,00,000.
- Laxmi Ltd. provides 2 years free warranty for the machinery. Laxmi Ltd. also providesan extended one-year warranty on payment of additional charges of ₹ 1,00,000.
- PQR Enterprises opted for one-year warranty.
- Laxmi Ltd. has collected consultancy charges in relation to pre-installation planningof ₹ 10,000 and freight and insurance charges from place of removal to buyer's premises of ₹ 20,000.
- Laxmi Ltd. received subsidy of ₹ 50,000 from Central Government for supplying themachinery to backward region since receiver was located in a backward region.
- Laxmi Ltd. also received ₹ 50,000 from the joint venture partner of PQR Enterprisesfor making timely supply of machinery to the recipient.
- A cash discount of 1% on the basic price of the machinery is offered at the time of supply, if PQR Enterprises agrees to make the payment within 30 days of the receiptof the machinery at his premises.
- Discount @ 1% was given to PQR Enterprises as it agreed to make the paymentwithin 30 days.
- The machinery attracts CGST and SGST @ 18% (9% + 9%) and IGST @18%.

Compute the CGST and SGST or IGST payable, as the case may be, on the machinery

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Illustration 22

BW Ltd. manufactures tobacco products. It has provided the following particulars relating to goods sold by it to CF Ltd.

Particulars	Amount (Rs)
Price of the goods (exclusive of all taxes/duties and discounts)	60,000
Excise duty	6,000
Packing charges	2,000
Freight (arranged by BW Ltd.)	1,600
Total amount billed to CF Ltd. before any discount	69,600
Discount @ 2% of the price of goods recorded in the invoice	

The final amount charged from CF Ltd. Is Rs. 69,600 less discount@2%.

Determine the value of taxable supply made by BW Ltd.

8. INPUT TAX CREDIT

Contents

- Eligibility and conditions for taking ITC [Sec 16]
- Apportionment of credit and blocked credits [Sec 17]
- Availability of credit in special circumstances [Sec 18]
- Tax treatment for inputs and capital goods sent for job work
- Tax treatment in case of ISD
- Utilisation of ITC [Sec 49]

1. INTRODUCTION

- The GST regime promises ***seamless credit on goods and services across the entire supply chain.***
- However, there are few exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services.
- ITC is considered to be the lifeline of the GST regime.
- It is the provisions of ITC, which essentially make GST a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

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1.1 – Salient Features of ITC

1) ITC is used for payment of tax on taxable output supply to avoid cascading effect of taxes.
2) Thus, it is concluded ITC is not available when tax is not payable on output supply, i.e., on exempt supply.
3) Broadly, ITC is available on all inputs, input services and capital goods used for purposes of business of a taxable person. The exception is 'blocked credit', where ITC is not available even when these goods or services are used for purposes of business.
4) The exception to the above principle is 'zero rated supply', i.e., exports or supplies to a special economic zone (SEZ) developer/unit, where ITC is available even if no tax is payable on output supply. Such ITC can be used either for payment of tax on supplies made with tax or refund of the same can be obtained. This simple mechanism is used to make exports and supplies to SEZ completely tax free.

5) If a taxable person is making both taxable and exempt supply, he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for taxable supply and no credit at all for inputs, input services and capital goods exclusively used for exempt supply.

6) If common inputs, input services and capital goods are used for taxable as well as exempt supply, only proportionate ITC attributable to the taxable supply is available.

2.ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT - SECTION 16

2.1 - Eligibility for taking ITC - Section 16(1)

1) Registration under GST -

- Every registered person shall be entitled to ITC of GST charged on inward supply of goods and / or services.
- This is subject to the provisions relating to use of ITC under section 49 and the conditions and restrictions in the rules.

2) Goods/services to be used for business purposes-

- ITC of GST will be available on goods and/or services which are used in the course or furtherance of the business.
- The "intention to use" the goods and/or services in the course or furtherance of business would also suffice for availing ITC on such goods and/or services.
- Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit.
- ITC will be credited in electronic credit ledger.

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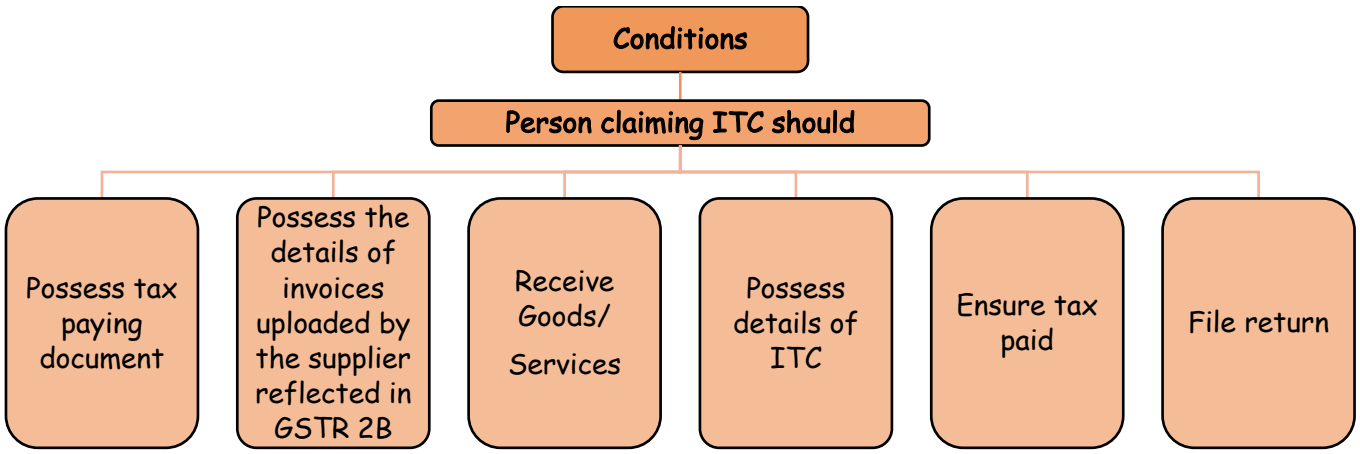
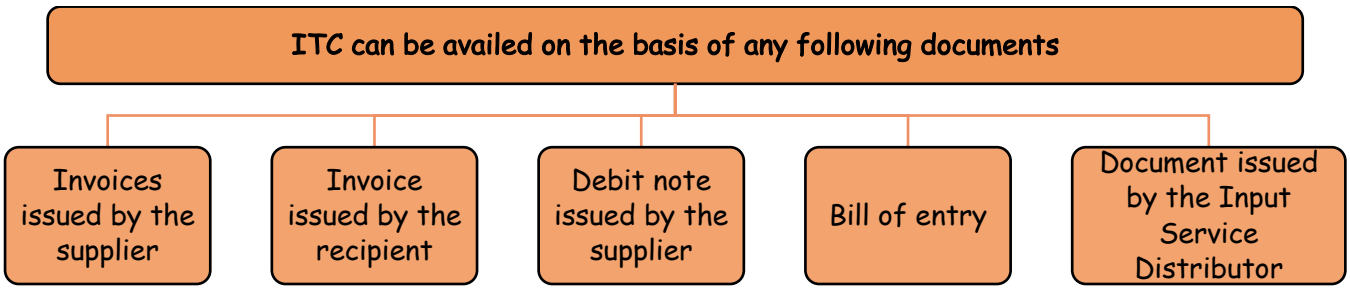
2.2 - Conditions for taking ITC - Section 16(2)

- The registered person will be entitled to ITC on a supply only if all the following four conditions are fulfilled:



a) Possession of tax paying document [Section 16(2)(a) read with rule 36]



Those documents shall contain –

- Amount of Tax charged
- Description of goods or services
- Total value of supply of goods and/or services
- GSTIN of Supplier and Recipient
- Place of Supply in case of Inter-State Supply

Note: No ITC of the Tax paid towards demands involving Fraud – Rule 36(3)

b) Details of invoices/debit notes uploaded by the supplier in his GSTR-1 or using IFF and details communicated in Form GSTR-2B [Section 16(2)(aa) read with rule 36(4)]

ITC on invoices/debit notes which have been ***furnished*** by the suppliers in their GSTR-1s/using IFF ***and reflected*** in GSTR-2B of recipient	***FULL ITC*** can be claimed on such invoices/debit notes, if all other conditions of availing ITC are fulfilled
ITC on invoice/debit note which have ***not been furnished*** by suppliers in their GSTR-1s/using IFF and thus, ***not reflected*** in GSTR-2B of recipient	***NO ITC*** can be claimed in respect of such invoices/debit notes.

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- On the other hand, full ITC can be availed in respect of IGST paid on imports, documents issued under reverse charge, credit received from ISD etc., which are outside the ambit of section 37(1).

c) Receipt of the goods and / or services [Section 16(2)(b)]
- The registered person taking the ITC must have received the goods and / or services.

d) Details of ITC in respect of the said supply communicated to the registered person under section 38 not restricted [Section 16(2) (ba)]

- Section 38 stipulates that the details of outward supplies furnished by the registered suppliers in GSTR-1/using IFF and an autogenerated statement - GSTR-2B - containing the details of ITC is made available to the recipients of such supplies every month.
- GSTR-2B contains the details of inward supplies (i) on which ITC is available to the recipient as well as (ii) on which ITC cannot be availed, whether wholly or partly, by

the recipient. Accordingly, ITC will not be available in respect of inward supplies details of which have been furnished by a registered supplier:

- who is a new registrant (Specified period from taking registration will be prescribed for this purpose.)
- who has defaulted in payment of tax for a prescribed period.
- whose output tax payable as per GSTR-1/IFF exceeds the output tax paid in GSTR-3B for a particular tax period by prescribed limit (Rule 88C).
- who has availed ITC of an amount that exceeds the credit that can be availed by him as per GSTR-2B during prescribed period and by prescribed limit.
- who has defaulted in discharging his tax liability in accordance with the provisions of section 49(12) read with rule 86B, i.e. who has discharged more tax liability from electronic credit ledger than prescribed under rule 86B
- other specified classes of persons.

e) Tax leviable on supply actually paid to Government [Section 16(2)(c)]

- The supplier should have actually paid the tax charged on the goods and/or services, for which ITC is being taken, either in cash or by utilizing ITC, subject to the provisions of ***section 41***.

Availment of Self-assessed ITC [Sec 41]

- A registered person can avail the credit of eligible ITC as self-assessed in his return. Such amount shall be credited to his electronic credit ledger.

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- ***Reversal of ITC*** in the case of non-payment of tax by the supplier and ***re-availment*** thereof [Section 41 read with rule 37A]

Re-availment of reversed ITC

- Where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him.
- Thus, where the said supplier subsequently furnishes the return in GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in GSTR-3B for a tax period thereafter.

Reversal of ITC

- If the tax payable corresponding to such ITC availed is not paid by the supplier to the Government, ITC so availed shall be reversed by the said person along with applicable interest.
- A registered person (recipient) can avail ITC in GSTR-3B for a tax period in respect of such invoice/debit note, the details of which have been furnished by its supplier in the statement of outward supplies (in GSTR-1/using IFF).
- However, if supplier does not furnish return in Form GSTR-3B for the tax period corresponding to the said statement of outward supplies till 30th September following the end of FY in which the ITC in respect of such invoice/ debit note has been availed; the said amount of ITC shall be reversed by the said recipient, while furnishing a return in GSTR-3B on or before 30th November following the end of such FY during which such ITC has been availed.
- However, where the said amount of ITC is not so reversed by recipient, such amount shall be payable by the said person along with interest thereon under section 50

f) Filing of return [Section 16(2)(d)]

- The registered person taking the ITC must have filed his return in GSTR-3B under section 39. Thus, a taxpayer should file GSTR-3B to avail ITC on eligible inward supplies.

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2.3 - Goods received in lots - First proviso to section 16(2)

- ITC available only on receipt of last lot

2.4 - Payment for the invoice to be made within 180 days - Second proviso to section 16(2) read with rule 37

- The registered person must pay to the supplier, the value of the goods and/or services along with the tax ***within 180 days from the date of issue of invoice.***
- In the ***event of failure*** to do so, the corresponding credits availed by the registered person would be added to his output tax liability, with interest.
- ***Interest will be paid @ 18%*** from the date of availing credit till the date when the amount added to the output tax liability is paid.
- However, ***once the recipient makes the payment*** of value of goods and/or services along with tax, he will be ***entitled to avail the credit again*** without any time limit.
- In case ***part-payment*** has been made, ***proportionate credit*** would be allowed.
- ***Exceptions*** - This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

  a) Supplies on which tax is payable under reverse charge

b) Deemed supplies without consideration

c) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply.

2.5 - Depreciation claimed on tax component - Sec 16(3)

- If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed.
- Thus, in respect of the tax paid on such items, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws. Dual benefit cannot be claimed.

2.6 - Time limit for availing ITC - Sec 16(4)

- ITC on invoices pertaining to a financial year or debit notes relating to invoices pertaining to a financial year can be availed any time till the
  - 30th November following the end of FY (OR)
  - The date of filing of the relevant annual return,
  - whichever is earlier.
- ***Exception*** - The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.
- ***Note*** - The time limit is only for availment and not for utilisation of credit.

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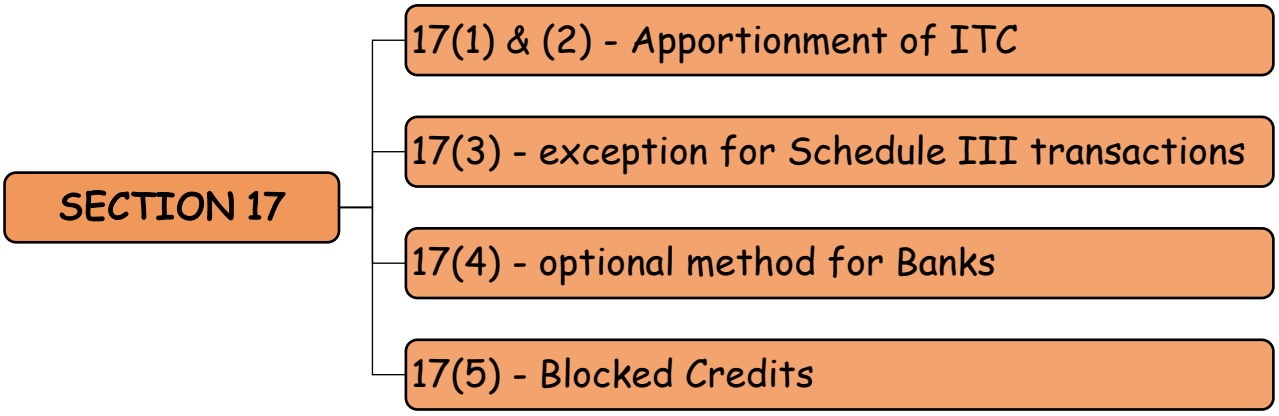
3. APPORTIONMENT OF CREDIT & BLOCKED CREDIT – SECTION 17



- The fundamental principle of credit scheme under value added tax is that ***tax paid*** on inputs, input services and capital goods ***can be availed as credit only when the output is taxable***. Thus, ***when tax is not payable on output, credit cannot be availed***.
- Accordingly, ***ITC under GST can be availed and utilised for payment of tax on output supply***. Consequently, ***ITC cannot be availed when tax is not payable on output supply***, i.e. on exempt supply.

- ***Exception:*** The only exception to the above principle is 'zero rated supply, where ITC is available even if no tax is payable on output supply as zero-rated supply is not an exempted supply.
- If a taxable person is making both taxable and exempt supply, ***he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for taxable supply*** and ***no credit at all for inputs, input services and capital goods exclusively used for exempt supply.***
- If common inputs, input services and capital goods are used for taxable as well as exempt supply, ***only proportionate ITC attributable to the taxable supply is available***.
- The common ITC is apportioned in the ratio of value of taxable supply and exempt supply.
- Also, in case goods and/or services are used by the taxable person ***partly for the business purposes and partly for non-business purposes*** - he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for business purposes and no credit at all can be availed for goods and/or services exclusively used for non-business purposes.
- If common inputs, input services and capital goods are used partly for business and partly for non-business purposes, only proportionate ITC attributable to the business purpose is available.
- The situations requiring apportionment are as follows:
    - when the goods and / or services are used by the registered person partly for the purpose of business and partly for other purposes ***[Section 17(1)]***, and
    - when the goods and / or services are used by the registered person partly for making taxable supplies including zero-rated supplies and partly for making exempt supplies ***[Section 17(2)]***.
- In both the above situations, full ITC on inward supplies cannot be taken; ***only proportionate ITC is allowed in such scenarios***.
- Where goods and/or services are used partly for non-business purposes and partly for business purposes - ***ITC attributable only to business purposes can be taken by the registered person.***
- Similarly, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies - ***ITC attributable to taxable supplies and zero-rated supplies can be taken by the registered person***.

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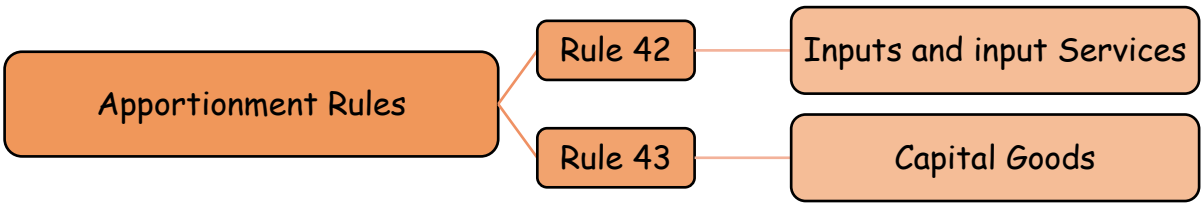
Apportionment of Credit - Rules 42 & 43



Rule 42 - Methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit:

- ***Step 1 – Compute common credit***

Total input tax involved on inputs & input services in a tax period	**T**
Less: Input tax that used exclusively for non-business purposes	**(T1)**
Less: Input tax used exclusively for exempt supplies	**(T2)**
Less: Input tax on blocked credits u/s 17(5)	**(T3)**
ITC credited to Electronic Credit Ledger [C1 = T – (T1+T2+T3)]	**C1**
Less: ITC used exclusively for taxable supplies including zero rated supplies	**(T4)**
Common ITC available for apportionment	**C2**

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- T1, T2, T3 and T4 will be determined and declared by the registered person at the invoice level in GSTR 2 and summary level in GSTR- 3B.
- Where ITC on inputs and input services used partly for non- business purposesand exempt supplies can be segregated at invoice level, the same will be added to T1 and T2 respectively and the balance credit will be added in T4.
- The portion identified as pertaining to taxable supplies in C2 will be allowed as ITC.

- ***Step 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit***

Common ITC available for apportionment	*C2*
Aggregate value of exempt supplies during the tax period	*E*
Total turnover in the State during the tax period	*F*
Apportion C2 into credit attributable to exempt supplies $D1 = C2 \ x \ \frac{E}{F}$	*D1*

- If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.

- ***Step 3 – Compute credit attributable to non-business purposes***

Compute credit attributable to non-business purposes ***D2 = 5% of C2***	***D2***

- ***Step 4 – Compute eligible Credits***

Compute C3 attributable to business purposes and taxable supplies including zero rated supplies as under ***C3 = C2 – (D1+D2)***	***C3***

- ***Step 5 - Restrict ineligible credits***

Reverse **D1 + D2.** The sum of D1 and D2 will be added to theoutput tax liability.	

- ***Key points with regard to Exempt supplies***
  - Exempt supplies **<u>include</u>**
    - ✓ Reverse charge supplies,
    - ✓ Transactions in securities,
    - ✓ Sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier and supply of warehoused goods before clearance for Home Consumption.
    - ✓ Thus, ***ITC attributable to such supplies will need to be reversed***.
  - Exempt supplies **<u>exclude</u>**
    - ✓ Supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.
    - ✓ Value of supply of Duty Credit Scrips
    - ✓ Thus, ***ITC attributable to such supplies need not be reversed.***
  - Aggregate value of exempt supplies and total turnover ***excludes the central excise duty, State excise duty, central sales tax and VAT.***
  - Non-taxable supply includes supply of
    - ✓ Alcoholic liquor for human consumption
    - ✓ Petroleum products like petroleum crude, diesel, petrol, ATF, natural gas.
  - Presently, (i) central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas (ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and (iii) VAT/CST is leviable on intra- State/inter-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor.

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- The value of exempt supply in respect of
  - ✓ Land and building are the value adopted for paying stamp duty and
  - ✓ for security is 1% of the sale value of such security.

- ***Final amount***
  - Compute C3 separately for ITC of CGST, SGST/ UTGST and IGST.
  - Compute ∑ (D1 + D2) for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following financial year.
  - If ∑ (D1 + D2) > the amount already reversed every month, the differential amount has to be reversed in any month till September in the following financial year and interest @ rate 18% should be paid on such differential amount from 1st April of succeeding year till the date of payment.
  - If the amount reversed every month > ∑ (D1 + D2), the additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year.

Rule 43 - Methodology for apportionment of ITC on Capital Goods and reversal thereof:

- ***Step 1 – Determine the credit based on exclusive use.***
  - Identify input tax on capital goods used/ intended to be used ***exclusively for non-business purposes or making exempt supplies*** and declare the same in Form GSTR 3B. Such amount will ***not be credited to electronic credit ledger***.
  - Identify input tax on capital goods used/ intended to be used ***exclusively for making taxable supplies other than exempted supplies but including zero rated supplies*** and declare the same in GSTR-3B. Such amount will be ***credited to electronic credit ledger***.

- ***Step 2 - Determine common credit on capital goods for a tax period***
  - Identify input tax on capital goods (as reflected on the invoice) which are used/intended to be used commonly for making taxable and/or zero rated supplies as well as exempt supplies and/or non-business purposes and denote the same as '**Tc**'.
  - Such amount (as reflected on the invoice) will be credited to electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'Tie', .
  - **Tie** shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed
  - 'Tie' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR 3B.
  - The ***useful life*** of such capital goods will be taken as ***5 years*** from the date of invoice.

- The input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'Tc';
- Determine common credit during the useful life of capital goods for a tax period as under and denote the same as 'Tm'

$$Tm = \frac{Tc}{60}$$

- ***Step 3 - Apportion common credit attributable to exempt supplies as under and denote it by T_e***

$$T_e = T_r \times (E/F)$$

- Where, E = Aggregate value of exempt supplies made during the tax period F = Total turnover in the State during the tax period
- All the points with regard to Aggregate value and exempt supplies are same as mentioned above under Rule 42.

- ***Step 4 – Add T_e to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods concerned.***

Exception for Schedule III transactions – Section 17(3)

The value of exempt supply under sub-section (2) shall be such as may be prescribed, and

- shall include supplies on which the recipient is liable to pay tax on RCM,
- transactions in securities,
- Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building and supply of warehoused goods before clearance for Home Consumption.

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Explanation - The expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except -

i. the value of activities or transactions specified in paragraph 5 of the said Schedule; and

ii. the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.";

Thus, it implies that the activities/transactions mentioned in clauses (i) and (ii) above are included in the value of exempt supply.

Further Explanation 3 inserted to Rule 43 prescribing value for the purpose of clause (ii) above as: the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.

Optional Method for Banks – Section 17 (4) + Rule 38

- As an alternative to the above method, a banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its

availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and ***the balance amount of input tax credit shall be reversed in Form GSTR-3B.***

- Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned u/s section 17(5) [blocked credits] cannot be availed.
- The restriction of availing 50% ITC shall not apply to the tax paid on supplies procured from another registration within the same entity, i.e. 100% credit of such tax can be availed.
- The option once exercised cannot be changed during the remaining part of the financial year.
- Interest is the main income of banks and NBFCs and the same is exempt from GST. Thus, if rule 42 and 43 are applied strictly, significant portion of ITC of banks and NBFCs will have to be reversed/added to output tax liability. Therefore, banks and NBFCs have been given the said option of availing 50% of eligible ITC to possibly encourage them as they are required to finance priority sectors, MSME, agriculture etc.

5. BLOCKED CREDITS – SECTION 17 (5)

- ITC of tax paid on almost every input and input services used for supply of taxable goods and/or services is allowed under GST except a small list of items provided u/s 17(5).
- Thus, ITC on such items is not allowed even though the same may qualify as inputs, input services or capital goods and are used in the course or furtherance of business.

5.1 - Motor vehicles and other conveyances and related services - Section 17(5)(a)

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- ITC is blocked on purchase of motor vehicles used for passenger transportation with certain exceptions.
- Motor vehicles for this purpose means any motor vehicle used for transportation of persons with seating capacity ≤ 13 persons (including the driver)
- ***Exceptions to the above rule***: Motor vehicles when used for any of the following purposes, ITC on them is allowable:
    1) making further taxable supply of such motor vehicles;
    2) making taxable supply of transportation of passengers;
    3) making taxable supply of imparting training on driving such motor vehicles
    4) motor vehicle used for transportation of goods, dumpers, tippers etc
    5) motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose.

5.2 - Vessels and aircrafts - Section 17(5)(aa)

- ITC is blocked on purchase of vessels and aircrafts used for business purposes with certain exceptions.

- ***Exceptions to the above rule:*** Credit is allowed in the following cases
    1) making further taxable supply of such vessels or aircraft
    2) making taxable supply of transportation of passengers
    3) making taxable supply of imparting training on navigating and flying such vessels
    4) vessels and aircrafts used in transportation of goods

5.3 - General insurance, servicing, repairs and maintenance - Sec 17(5)(ab)

- ***ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is not allowed.***
- ITC is allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.
- ITC is allowed on such services when received by Manufacturer of such motor vehicle, vessels or aircrafts.
- ITC is allowed on such services when receiver is engaged in general insurance business.

5.4 - Leasing, renting and hiring of motor vehicles, vessels, or aircraft - Section 17(5)(b)

- ITC is not allowed on Leasing, renting and hiring of motor vehicles, vessels, or aircraft on which ITC is blocked. 1FIN by IndigoLearn
- ITC on such services is allowed
    - when used for making an outward taxable supply of the same category of services or as an element of a taxable composite or mixed supply.
    - when provided by an employer to its employees under a statutory obligation
- ITC on leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is allowed, is also allowed.

5.5 - Food & beverages, outdoor catering, health services and other services - Section 17(5)(b)

- ITC is blocked in the case of
    - Food and beverages
    - Outdoor catering
    - Beauty treatment
    - Health Services
    - Cosmetic and plastic surgery
    - Life insurance and health insurance
- However, ITC is allowed if

- Such goods and/or services when used by a registered person for making an outward taxable supply of the same category of goods and/or services or as an element of a taxable composite or mixed supply.
- Such goods and/or services when provided by an employer to its employees under a statutory obligation.

5.6 - Membership of a club, health and fitness center - Section 17(5)(b)

- ITC on Membership of a club, health and fitness center taken for either personal use or business use (i.e. By the employer for its employees) is not allowed.
- However, ITC is allowed on such services when provided by an employer to its employees under a statutory obligation.

5.7 - Travel benefits extended to employees on vacation such as leave or home travel concession - Section 17(5)(b)

- ITC on Travel benefits extended to employees on vacation such as leave or home travel concession is blocked.
- ITC is allowed on such services when provided by an employer to its employees under a statutory obligation.

5.8 - Works contract services for construction of immovable property - Section 17(5)(c)

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- ITC on works contract services for construction of an immovable property is blocked.
- "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.
- If re-construction, renovation, additions or alterations or repairs are not capitalized, it would not tantamount to construction under GST law. Thus, ***when the value of works contract service is not capitalized, ITC is allowed to all recipients irrespective of their line of business***.
- Capitalisation of an expense does not depend on whether the taxpayer intends to avail ITC, but on the basis of Accounting Standards and GAAP.

Works Contract – [Sec 2(108)] – means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning ofany ***immovable property*** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

- Essentially works contract is a composite supply involving both goods and services. Under GST law, the ambit of works contract has been ***confined only to immovable property***.
- ***Exceptions to the above rule***: ITC on works contract services for construction of immovable property is available only in the following 2 situations:

- When the works contract service is availed by a works contractor for being used in providing the works contract service.
- For construction of plant and machinery (ITC is allowed to all the recipients irrespective of their line of business)

"Plant and machinery" *- means apparatus, equipment, and machinery fixed to earth by foundation or structural supports that are used for making outward supply of goods and/or services and includes such foundation or structural support but excludes*

1) *Land, building or other civil structures,*
2) *Telecommunication towers, and*

5.9 - Self-construction of immovable property - Section 17(5)(d)

- ITC is not allowed on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) ***on his own account*** even though such goods and/or services are used in the course or furtherance of business.
- ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the immovable property being constructed is used in the course or furtherance of his business.
- 'construction' and 'plant and machinery' for works contract services as defined above, applies to construction on own account also.
- Thus, ITC on goods and/or services used in construction of immovable property is available only in the following three situations:
    1) For construction of plant and machinery
    2) When the value of goods and/or services is not capitalized
    3) When the construction is not on own account

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5.10 - Inward supplies charged to tax under composition levy - Section 17(5)(e)

- Tax paid on goods and/or services under composition scheme is not available as ITC.
- Since a composition supplier cannot collect any tax on its supplies, from the recipient of its supplies, it is obvious that no ITC can be availed in respect of such supplies by the recipients.
- A supplier registered under composition scheme issues bill of supply and not a tax invoice.

5.11 - Inward supplies received by a non-resident taxable person - Section 17(5)(f)

- A non- resident taxable person has no fixed place of business in India but he sporadically supplies goods or services in India.

- Tax paid on goods and/or services received by such non-resident taxable person, is not available as ITC. However, tax paid by him on ***imported goods*** is allowed as ITC.
- ***ITC on goods imported by a non-resident taxable person is allowed, ITC on services imported by him is blocked.***

5.12 – Inward supplies used for CSR relates activities – Section 17(5)(fa)

- ITC is blocked on goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013

5.13 - Inward supplies used for personal consumption - Section 17(5)(g)

- Section 17(5)(g) specifically blocks the ITC on goods and/or service used for personal consumption.
- The term 'personal consumption' may be understood in the general sense which would mean non-business use.
- One of the foremost conditions laid down in section 16 for availing ITC on goods and/or services is that such goods and/or services should be used in the course or furtherance of business.
- Further, where goods and/or services are used partly for the purpose of any business and partly for other purposes, section 17(1) restricts the credit to so much of the ITC as is attributable to business purposes.

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5.14 - Free samples, gifts, goods lost/stolen etc. - Sec 17(5)(h)

- Section 17(5)(h) blocks credit on
    - Goods that are disposed of by way of gift
    - Goods that are disposed of by way of free samples
    - Lost goods
    - Stolen goods
    - Destroyed goods
    - Goods that are written off
- This is because principally, ITC is available only for payment of tax on output supply. If no tax is payable on output supply, ITC on inputs/input services/capital goods relating to such output supply is not eligible.
- Gift means transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. It cannot be demanded as a matter of right.
- samples are given to prospective customers to enable them to test the quality of the item before making a decision to buy the same.
- ***Buy one get one free offer*** - It can be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite

supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8. ITC shall be available to the supplier for the inputs, input services and capital goods.

- ***Discounts including 'Buy more, save more' offers*** - Discounts offered by the suppliers to customers shall be excluded to determine the value of supply.
- However, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.
- ***Return of time expired medicines/drugs are treated as fresh supply*** - The retailer/ wholesaler can return the time expired goods, either by treating the same as fresh supply or by issuing credit notes.
- Where the goods returned by the retailer/wholesaler as a fresh supply, are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of section 17(5)(h).

5.15 - Tax paid in fraud cases, detention, confiscation etc. - Section 17(5)(i)

- Tax paid under sections 74, 129 and 130 is not available as ITC.
- These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

6. CREDIT IN CASE OF SPECIAL CIRCUMSTANCES - SECTION 18

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6.1 - Person liable for registration – Section 18(1)(a)

- A person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration
- shall be entitled to take credit of input tax in respect of
    - inputs held in stock and
    - inputs contained in semi-finished or
    - inputs contained in finished goods
- held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;
- The above benefit of ITC is not available to any person who applies for registration after 30 days from the date he is liable to registration.

6.2 - Voluntary registration – Section 18(1)(b)

- A person who takes registration under voluntary registration scheme
- shall be entitled to take credit of input tax in respect of
    - inputs held in stock and
    - inputs contained in semi-finished or

    - inputs contained in finished goods
- held in stock on the day immediately preceding the date of grant of registration.

6.3 - Exiting composition levy – Section 18(1)(c)

- Registered person who ceases to pay composition tax and switches to regular scheme
- shall be entitled to take credit of input tax in respect of
    - inputs held in stock and
    - inputs contained in semi-finished or
    - inputs contained in finished goods and
    - Capital goods
- Held in stock on the day immediately preceding the date from which he becomes liable to pay tax under regular scheme.
- ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice.
- ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier.

6.4 - Exempt supply becoming taxable supply – Section 18(1)(d)

- Registered person whose exempt supplies become taxable supplies
- shall be entitled to take credit of input tax in respect of

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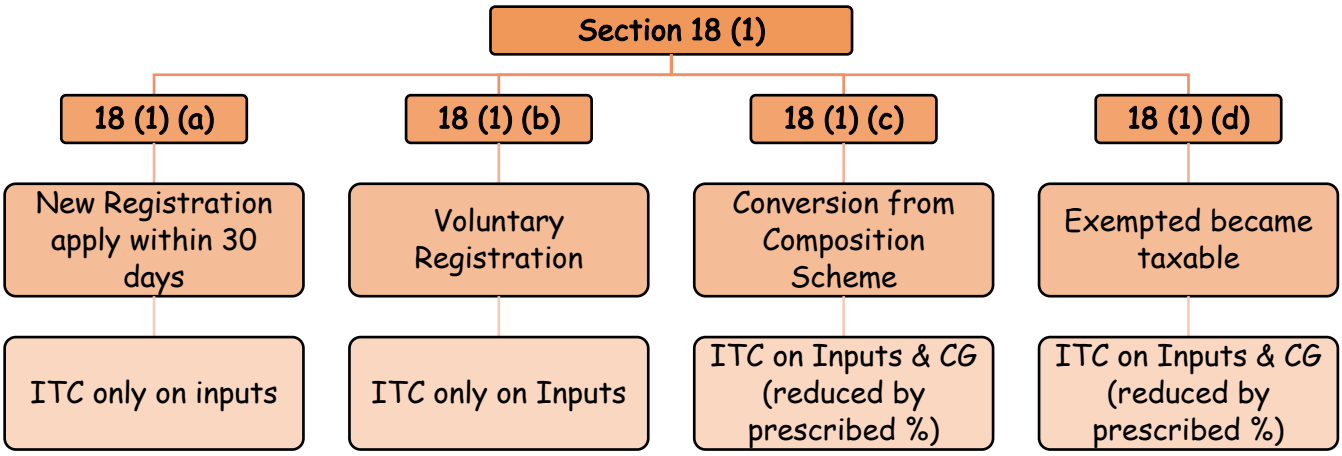
    - Inputs held in stock and
    - Inputs contained in semi-finished or
    - Inputs contained in finished goods held in stock relatable to such exempt supply and
    - capital goods exclusively used for such exempt supply
- held in stock on the day immediately preceding the date from which such supply becomes taxable.
- ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice.
- ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier.



6.5 - Common points for the above 4 cases -

- ***Prescribed form*** - The registered person has to make an electronic declaration in form ***ITC-01*** on the common portal,
- clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in sec 18(1)(a)/(b)/(c)/(d).
- ***Time limit*** - The declaration is to be filed ***within 30 days*** (extendable by commissioner /Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC.

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- ***Declaration*** - If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together ***exceeds Rs. 2,00,000***, the declaration needs to be certified by a ***practicing Chartered Accountant/Cost Accountant.***
- ***Restrictions on ITC***- A registered person shall not be entitled to take ITC in respect of any supply of goods or services or both to him after the ***expiry of one year*** from the date of issue of tax invoice relating to such supply. ***[Sec 18(2)]***

6.6 - Change in the constitution of a registered person - Section 18(3)

- Where there is a change in the constitution of a registered person
- on account of sale, merger, demerger, amalgamation, lease or transfer of the business
- with the specific provisions for transfer of liabilities,
- the said registered person shall be allowed to transfer the ITC which remains unutilised in his electronic credit ledger to such transferee.
- A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de- merger, amalgamation, lease or transfer of business, in ***Form GST ITC-02***, along with a request for transfer of unutilized ITC lying in his electronic credit ledger to the transferee [Rule 41]

- Transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.
- In the ***case of demerger***, the ITC shall be ***apportioned in the ratio of the value of assets*** of the new units as specified in the demerger scheme. Here, "value of assets" means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.
- The transferor shall also submit a copy of a certificate issued by a practicing Chartered Accountant or cost accountant certifying that the sale, merger, de- merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.
- The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

6.7 - Switching from normal levy to composition levy or from taxable to exempt supply - Section 18(4)

- Section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.
- The registered person shall be required to reverse ITC taken on
    - Inputs held in stock and
    - Inputs contained in semi-finished or
    - Inputs contained in finished goods and
    - capital goods
- held in stock on the day immediately preceding the date from which such supply becomes exempt or he switches to composition scheme.

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- ***ITC on inputs*** should be ***reversed proportionately*** on the basis of corresponding invoices on which credit had been availed on such inputs.
- If ***invoices are not available***, ITC can be reversed on the basis of the ***prevailing market price*** of such goods on the date of switch over/exemption.
- The details furnished on the basis of prevailing ***market value*** need to be duly ***certified by a practicing Chartered Accountant/ Cost Accountant.***
- ITC involved in the remaining useful life (in months) of the capital goods should be reversed on pro-rata basis, taking the useful life as 5 years.
- The registered person has to debit the electronic credit or cash ledger by the reversal amount in respect of inputs and capital goods.
- ***Balance of ITC***, if any, lying in the electronic credit ledger ***lapses***.
- ITC to be reversed on inputs and capital goods is calculated separately for ITC of CGST, SGST/UTGST and IGST.
- The reversal amount is added to the output tax liability of the registered person.

6.8 - Supply of capital goods or plant and machinery on which ITC has been taken - Section 18(6)

- If capital goods or plant and machinery on which ITC has been taken are supplied outward by the registered person, he must pay an amount that is the ***higher of the following***:
    - ITC taken on such goods reduced by ***5% per quarter of a year or part thereof*** from the date of issue of invoice for such goods (i.e., ITC pertaining to remaining useful life of the capital goods), or
    - ***tax on transaction value***
- ITC pertaining to remaining useful life of the capital goods should be computed separately for ITC of CGST, SGST/UTGST and IGST.
- Where the amount so determined exceeds the tax payable on the transaction value of the capital goods, such amount need to be paid and thus, should be added to the output tax liability.
- If ***refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap***, the taxable person may pay ***tax on the transaction value***.

6.9 - Cancellation of registration

- Cancellation of registration also requires reversal of ITC on
    - inputs held in stock/ 1FIN by IndigoLearn
    - contained in semi-finished goods or
    - Contained in finished goods held in stock,
    - capital goods or plant and machinery
- on the day immediately preceding the cancellation date.
- The amount to be reversed on inputs and capital goods is computed in the manner as applicable for sub- sections (4) and (6) of section 18 (discussed above).
- Such amount is then compared with the output tax payable on such goods, and the higher of the two amounts is finally paid by the registered person.

Quarter [Sec 2(92)] - *means* a period comprising three consecutivecalendar months, ending on the last day of March, June, September andDecember of a calendar year.

7. MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR — RECOVERY IN CASE OF WRONG DISTRIBUTION - SECTION 20 & 21

Input Service Distributor [Sec. 2(61)] - "Input Service Distributor" [ISD] means an office of the supplier of goods or services or both which

Receives tax invoices issued under section 31 towards the receipt of input services and

Issues a prescribed document for the purposes of distributing the credit of Central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having same Permanent Account Number as that of said office;

Relevant period - "Relevant period" shall be—

If the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

If some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

Recipient of credit - The expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the ISD

Turnover - The term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

General - The Input Service Distributor shall distribute —

The credit of central tax as central tax or integrated tax and

The credit of integrated tax as integrated tax or central tax,

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By way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

Conditions - The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

Valid document: the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

Distribution cannot exceed credit: the amount of the credit distributed shall not exceed the amount of credit available for distribution;

Specific to specific distribution: the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

Credit of more than one unit to be apportioned to them in turnover ratio of last year, if operational in current year : the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period.

Credit of all units to be apportioned to all in turnover ratio of last year, if

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

7.1 - Manner of recovery of credit distributed in excess - Section 21 Where the Input Service Distributor distributes —

The credit in contravention of the provisions contained in section 20

Resulting in excess distribution of credit to one or more recipients of credit,

The excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Procedure for distribution of input tax credit by Input Service Distributor {Rule 39}

1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the conditions specified below:—

   a) The input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter

   b) The Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount ineligible as input tax credit under provisions of sub-section (5) of section 17 and the amount eligible as input tax credit;

   c) The input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause d.

   d) The input tax credit that is required to be distributed in accordance with the provisions of clause(d) and (e) of sub- section (2) of section 20 to one of the recipients 'Rl', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C_1", to be calculated by applying the following formula: —

$$C_1 = (t_1 / T) \times C$$

were, —

"C" is the amount of credit to be distributed,

"t_1" is the turnover, as referred to in section 20, of person Rl during the relevant period, and

"T" is the aggregate of the turnover of all recipients during the relevant period;

e) Input tax credit on account of integrated tax is distributed as input tax credit of integrated tax to every recipient;

f) Input tax credit on account of central tax and State tax shall,—

I. In respect of a recipient located in the same State in which the Input Service Distributor is located, be distributed as input tax credit of Central tax and State tax respectively;

II. In respect of a recipient located in a State other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax that qualifies for distribution to such recipient in accordance with clause (d);

g) The Input Service Distributor shall issue an ISD invoice, as prescribed in invoice rules, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

h) The Input Service Distributor shall issue an ISD credit note, as prescribed in invoice rules, for reduction of credit in case the input tax credit already distributed gets reduced for any reason.

i) Any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (g) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) above and such credit shall be distributed in the month in which the debit note has been included in the return in ***FORM GSTR-6***.

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8. HOW ITC IS UTILISED? – SECTION 49

8.1 - Rules of Utilisation

- ITC is credited to a registered person's electronic credit ledger. A taxable person is entitled for ITC of CGST, SGST/UTGST and IGST depending upon the nature of supplies received by him.
- The amount of ITC available in the electronic credit ledger of the registered person on account of--

1) IGST shall first be utilised towards payment of IGST and the amount remaining, if any, may be utilised towards the payment of CGST and SGST, or as the case may be, UTGST, in any order and any proportion,

2) CGST shall first be utilised towards payment of CGST and the amount remaining, if any, may be utilised towards the payment of IGST;

3) SGST shall first be utilised towards payment of SGST and the amount remaining, if any, may be utilised towards payment of IGST;

4) UTGST shall first be utilised towards payment of UTGST and the amount remaining, if any, may be utilised towards payment of IGST;

5) ITC on account of SGST / UTGST shall be utilised towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST

6) CGST shall not be utilised towards payment of SGST or UTGST; and

7) SGST or UTGST shall not be utilised towards payment of CGST.

8) ITC on account of CGST, SGST /UTGST shall be utilised towards payment of any output tax, only after the ITC available on account of IGST has first been utilised fully.

- GST is a dual GST wherein two taxes viz, CGST and SGST/UTGST are levied concurrently on a supply transaction. While the CGST revenue accrues to Central Government, SGST and UTGST revenue accrue to respective State Government and Union Territory respectively. Hence, ITC of CGST and SGST/UTGST is not inter- changeable.
- IGST is a transitory tax. IGST paid by taxpayer initially goes to the Central Clearing Authority.

8.2 - Cross Utilisation of ITC

- Cross utilization of IGST and CGST, SGST/UTGST is permissible.
- Cross-utilization of credit is available only between CGST - IGST and SGST/UTGST - IGST.
- Cross utilization of CGST and SGST/UTGST is not permissible.
- ITC of IGST need to be exhausted fully before proceeding to utilize the ITC of CGST and SGST in that order.

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ITC available	Can be set off against output of	Order of set off
IGST	IGST , CGST SGST UTGS T	1. IGST first for IGST 2. Balance IGST for CGST or SGST/UTGSTwhichever order i.e., ITC of IGST can be utilized either against CGST or SGST.
CGST	CGST IGST	1. CGST 2. IGST
SGST/ UTGST	SGST IGST	1. SGST 2. IGST
UTGST	UTGS T IGST	1. UTGST 2. IGST

8.3 – Restrictions on utilization of ITC – Rule 86A

- The ***Commissioner/*** an officer (not below the rank of an Assistant Commissioner)

authorised by him is ***empowered to impose restrictions*** on utilization of ITC available if he has ***reasons to believe that such ITC has been fraudulently availed or is ineligible.***

- The restrictions can be imposed in the following circumstances:
  1) ITC has been availed on the basis of tax invoices/valid documents -
     - issued by a non-existent supplier or by a person not conducting anybusiness from the registered place of business; or
     - without receipt of goods or services or both; or
     - the tax in relation to which has not been paid to the Government
  2) The registered person availing ITC has been found non-existent or not to be conducting any business from the registered place of business; or
  3) The registered person availing ITC is not in possession of tax invoice/valid document.
- If the ITC is so availed, the restrictions can be imposed
  - by ***not allowing such ITC to be used*** for discharging any liability undersection 49 or
  - ***not allowing refund*** of any unutilised amount of such ITC.
- Such restrictions can be ***imposed for a period up to 1 year*** from the date of imposing such restrictions.
- However, the Commissioner/officer authorised by him, can withdraw such restriction if he is satisfied those conditions for imposing the restrictions no longer exist.

8.3 – Restrictions on use of amount available in Electric Cash Ledger – Rule 86B

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- Rule 86B restricts the use of ITC available in the electronic credit ledger for discharging output tax liability. The aforesaid rule starts with a non-obstante clause and thus, has an over-riding effect on any other provisions of the CGST Rules.
- ***Applicability of Rule 86B:***
  - Rule 86B is applicable to the registered person having value of taxable supply (other than exempt supply and zero-rated supply) in a month exceeding Rs. 50 lakhs.
  - Therefore, in cases wherein value of taxable supply in a month is up to Rs. 50 lakhs, then this restriction would not be applicable.
- ***Exceptions:***

This restriction shall not apply in following cases: -

- Where the said person/proprietor/karta/managing director/any of its two partners, whole-time directors, members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than INR 1 lakh as Income Tax in each of the last 2 financial years

Where the registered person has received a refund of more than 1 lakh in the preceding FY on account of unutilised ITC in case of (i) zero rated supplies made without payment of tax or (ii) inverted duty structure **Exceptions:**

This restriction shall not apply in following cases:-

- Where the said person/proprietor/karta/managing director/any of its two partners, whole-time directors, members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than INR 1 lakh as Income Tax in each of the last 2 financial years

- Where the registered person has received a refund of more than 1 lakh in the preceding FY on account of unutilised ITC in case of (i) zero rated supplies made without payment of tax or (ii) inverted duty structure

- Where the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year.

- Where the registered person is:-

    - Government Department
    - Public Sector Undertaking
    - Local authority
    - Statutory body

Note:

Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit

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- Where the registered person is: -

    - Government Department
    - Public Sector Undertaking
    - Local authority
    - Statutory body

- ***Note:***

Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit

9. CLARIFICATIONS

9.1 - Clarification regarding availment of ITC in respect of common input services procured from a third party but attributable to both HO and BO's or exclusively to one or more BO's

Issue: Whether HO can avail the ITC in respect of common input services procured from a third party but attributable:

i. to both HO and BOs or

ii. exclusively to one or more BOs,

issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (ISD) mechanism for distribution of ITC in respect of such common input services?

Clarification: It is clarified that in such a case, as per the present provisions of the law, it is not mandatory for the HO to distribute such ITC by ISD mechanism. HO has an option to:

i. distribute ITC in respect of such common input services by following ISD mechanism, or

ii. issue tax invoices under section 31 to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of sections 16 and 17.

ISD mechanism can be opted only if the said input services are attributable to the said BO or have actually been provided to the said BO. In case ISD mechanism is opted, HO is required to get itself registered mandatorily as an ISD. Similarly, the HO can issue tax invoices under section 31 to the concerned BOs, only if the common input services have actually been provided to the concerned BOs.

HO has an option to:

i. distribute ITC in respect of such common input services by following ISD mechanism, or

ii. issue tax invoices u/s 31 to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of sections 16 and 17

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CLARIFICATION IN RESPECT OF GST LIABILITY AND INPUT TAX CREDIT (ITC) AVAILABILITY IN CASES INVOLVING WARRANTY/ EXTENDED WARRANTY:

Initial Clarification: Circular No. 195/07/2023-GST clarified that when parts are replaced under warranty by the manufacturer, no additional GST is applicable because the replacement is part of the original supply of goods, for which GST has already been paid. The manufacturer is not required to reverse Input Tax Credit (ITC) for these replacements.

Extension in Circular No. 216/10/2024-GST:

Inclusion of Full Goods Replacement: Circular No- 216/10/2024-GST extends this clarification to include cases where entire goods, not just ports, are replaced under warranty- The same principles apply—no additional GST is charged on the replacement of goods, and no ITC reversal is required. This means that whether a part or the entire product is replaced, the GST treatment remains the same as clarified earlier.

Replenishment of Goods or Ports by Manufacturer to Distributor:

Situation Clarified: Distributor Replacement: Often. distributors replace defective parts or goods for customers under warranty. using their own stock Later, the manufacturer replenishes the distributor's stock

GST Treatment: When the manufacturer replenishes the stock provided to the distributor via a delivery challan without charging any consideration, no GST is payable on this replenishment Additionally, the manufacturer does not need to reverse ITC on these goods or parts

Reversal in case of insurance companies:

The premium portion not included in the taxable value is not considered as an exempt or non-taxable supply. Therefore, there is no need for reversal of ITC under the provisions of Rule 42 or Rule 43, in relation to that premium amount
Essentially, the entire premium for taxable life insurance policies—even though some portion may not be included in the taxable value—will not be treated as exempt or non-taxable for the purpose of ITC calculations.

This ensures that insurance companies do not have to reverse ITC on the premium amount that is excluded from the taxable value due to special valuation rules under Rule 32(4) of CGST Rules, 2017

Clarification in case of plant and machinery:

Ducts and manholes, which are integral to the OFC network i.e., Optical Fiber Cables qualify as "plant and machinery". Hence, ITC shall be allowed.

Section 16(5) of CGST Act:

Registered persons can claim Input Tax Credit (ITC) for invoices or debit notes related to supplies of goods or services from the financial years 2017-18, 2018-19, 2019-20, and 2020-21 until November 30, 2021. This was a temporary extension for claiming ITC for these specific years beyond the usual timeframe.

Section 16(6) of CGST Act:

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If a person's GST registration was cancelled and later revoked (either under Section 30 or by an Appellate Authority, Tribunal, or Court). and the time limit for availment of ITC under Sec 16(4) has not expired as on the date of order of cancellation of registration, they may still be entitled to claim ITC.
The registered person can claim ITC on such invoices or debit notes, in any return filed within:

a) Regular time limit for such invoice or debit notes under Sec 16(4) (or)
b) 30 days from the date of order of revocation of cancellation of registration, **whichever is later.**

Clarification on availability of Input Tax Credit (ITC) *under* ***Section 16(2)(b)*** *of the CGST Act, 2017 — in cases where goods are delivered at the supplier's premises under* ***Ex-Works (EXW) contracts****.*

1. Background

- *Representations received from the* ***automobile sector*** *sought clarity on ITC availability when:*
  - *Goods (vehicles) are delivered by the* ***OEM*** *to the* ***dealer's transporter*** *at the* ***OEM's factory gate*** *under* ***Ex-Works contracts****.*
- *Field officers were denying ITC until* ***physical receipt*** *of goods at the dealer's premises.*
- ***Show cause notices*** *were issued for "wrongful availment" of ITC.*

2. Legal Provision

- ***Section 16(2)(b)*** *of CGST Act:*
  ITC can be claimed only when the registered person has ***"received"*** *the goods or services.*
- ***Explanation to Section 16(2)(b)*** *provides deemed receipt:*
  - *When goods are delivered by the supplier* ***to another person*** *on the* ***direction*** *of the recipient.*
  - *Whether acting as an agent or otherwise.*
  - *Delivery can be by* ***transfer of documents of title*** *or otherwise.*

3. Clarification by CBIC

3.1 No specific place of "receipt"

- *The CGST Act does* ***not require physical receipt at any particular place*** *(unlike old Central Excise laws).*
- *"Receipt" is established by* ***transfer of ownership/control****, not physical possession.*

3.2 Deemed Receipt (Explanation to Section 16(2)(b))

Goods are deemed received when:

- *Delivered by supplier* ***to recipient or any other person*** *on recipient's direction (e.g., transporter),*
- *Such delivery may occur* ***before/during movement****, and*
- *May be through* ***transfer of title documents*** *or otherwise.*

4. Application to Ex-Works (EXW) Contracts

Facts in Automobile Sector

- *OEM hands over goods to* ***transporter at factory gate****.*
- *Transport and insurance are arranged* ***on behalf of dealer****.*
- *Risk and property pass to dealer at that moment.*

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CBIC Clarification

- *The* ***dealer is deemed to have received*** *goods when OEM* ***hands over goods to transporter*** *at the factory gate.*
- *ITC can be availed* ***at that point****, even if goods reach later.*
- *Hence,* ***no requirement of physical receipt*** *at dealer's premises.*

5. Extension to Other Goods

- *The same principle applies to* ***all EXW contracts*** *where:*
  - *Property in goods passes at supplier's place of business.*
  - *Goods are handed over to recipient or their agent/transporter.*

In such cases, recipient is ***deemed to have received*** *goods upon such handing over.*

6. Conditions and Limitations

- *ITC allowed* ***only if goods are used or intended for business*** *(Section 16(1)).*
- *If goods are:*
  - ***Diverted*** *for non-business use,*
  - ***Lost, stolen, destroyed, written off****, or*
  - ***Given as gifts or free samples****,*
    then ITC must be ***reversed*** *under Section 17(5)(h).*

ILLUSTRATIONS

Illustration 1

Mr. A, a registered person was paying tax under Composition Scheme up to 30th July. However, w.e.f. 31st July, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for ITC?

Illustration 2

What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?

Illustration 3

XYZ Ltd., is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 2018 from the following particulars: -

S. No.	Inward supplies	GST (Rs.)	Remarks
1.	Inputs 'A'	1,00,000	One invoice on which GST payable was Rs. 10,000,is missing.
2.	Inputs 'B'	50,000	Inputs are to be received in two instalments. First instalment has been received in October,2018.
3.	CapitalGoods	1,20,000	XYZ Ltd. Has capitalised the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.
4.	Input Services	2,25,000	One invoice dated 20.01.2018 on which GST payable was Rs. 50,000 has been received in October, 2018.

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Note:

1. All the conditions necessary for availing the ITC have been fulfilled.
2. XYZ Ltd. is not eligible for any threshold exemption.
3. The annual return for the financial year 2017-18 was filed on 15th September,2018.

Illustration 4

Granites Textiles Ltd. purchased a needle detecting machine on 8th July,2017 from Makhija Engineering Works Ltd. for Rs. 10,00,000 (excluding GST) paying GST @ 18% on the same.

- It availed the ITC of the GST paid on the machine and started using it formanufacture of goods.
- The machine was sold on 22nd October,2018 for Rs. 7,50,000 (excluding GST), as second hand machine to LT. Pvt. Ltd.
- The GST rate on supply of machine is 18%.

State the action which Granites Textiles Ltd. is required to take, if any, in accordance withthe statutory GST provisions on the sale of the second-hand machine.

Example

AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. Can AB & Co. avail credit on GST charged by CD & Co.?

Example

Outdoor catering services availed by a company, for a team development eventorganized for its employees. Is ITC allowed?

Example

Outdoor catering service availed by a company to run a canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. Is ITC Allowed?

Illustration 5

ABC Co. Ltd. is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

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S.No	Items	GST paid (Rs.)
i)	Electrical transformers to be used in the manufacturing process	5,20,000
(ii)	Trucks used for the transport of raw material	1,00,000
(iii)	Raw material	2,00,000
(iv)	Confectionery items for consumption of employees working in the factory. These items were supplied free of cost to the employees in lieu of services rendered by them to the manufacturer in the course of employment.	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items.

Note:

1. All the conditions necessary for availing the ITC have been fulfilled.
2. ABC Co. Ltd. is not eligible for any threshold exemption.

Illustration 6

Fun Pharma Private Limited, a registered supplier is engaged in the manufacture of Taxable goods.

The company provides the following information of GST paid on the purchases made /input services availed by it during the month of September 2017 :

S,No	Particulars	GST Paid(Rs.)
(i)	Purchase of cabs used for the transportation of its employees	3,30,000
(ii)	Inputs consisting of three lots, out of which first lot wasreceived during the month	1,25,000
(iii)	Capital Goods (Out of three items, invoice for one item wasmissing and GST paid on that item was Rs. 25,000)	2,50,000
(iv)	Outdoor catering service availed on Women's Day	72,000

Determine the amount of Input Tax Credit available with M/s Fun Pharma PrivateLimited for the month of September 2017 by giving necessary explanations for treatment of various items.

All the conditions necessary for availing the Input Tax Credit have been fulfilled.

Illustration 7

CANWIN Ltd., a registered supplier, is engaged in the manufacture of tanks. The company provides the following information pertaining to GST paid on thepurchases made/ input services availed by it during the month of January 2018:

S.No.	Particulars	GST Paid(Rs.)
(I)	Purchase of machinery where debit note is issued	1,15,000
(ii)	Input purchased was directly delivered to Mr. Joe, a job worker and registered supplier	80,000
(iii)	Computers purchased (Depreciation was claimed on the GST Portion under the Income Tax Act, 1961)	50,000
(iv)	Works Contract services availed for Construction of Staff quarters within the company premises	4,25,000

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Determine the amount of ITC available to M/s CANWIN Ltd. for the month of January2018 by giving brief explanations for treatment of various items.

Subject to the information given above, all the conditions necessary for availing the ITC have been fulfilled.

Illustration 8

Cloud Seven Private Limited, a registered supplier, is engaged in the manufacture oftaxable goods. The company provides the following information pertaining to GST paid on thepurchases made/input services availed by it during the month of February, 20XX:

S.No.	Particulars	GST Paid(Rs.)

(i)	Trucks used for transport of raw material	1,20,000
(ii)	Foods and beverages for consumption of employees working in the factory	40,000
(iii)	Inputs are to be received in five lots, out of which third lot was received during the month	80,000
(iv)	Membership of a club availed for employees working in the factory	1,50,000
(v)	Capital Goods (out of five items, invoice for one item was missingand GST paid on that item was Rs.50,000)	4,00,000
(vi)	Raw material (to be received in March, 20XX)	1,50,000

Determine the amount of input tax credit available with Cloud Seven Private Limited for the month of February, 20XX by giving necessary explanations for treatment of various items.

All the conditions necessary for availing the input tax credit have been fulfilled.

Illustration 9

Le Mark Ltd. of Nashik, Maharashtra, a registered supplier, is engaged in manufacturing taxable goods. It provides the following details of items purchased and services availed by it from Gujarat, for the month of March, 20XX:

S.No.	Particulars	GST Paid(Rs.)
(i)	Motor vehicle purchased for employees to be used for personal aswell as business purposes	1,50,000
(ii)	Motor vehicle purchased for transportation of goods within thefactory	2,00,000
(iii)	Food items for consumption of employees. These items are supplied free of cost to the employees in lieu of services rendered by them to the manufacturer in the course of employment	2,000
(iv)	Rent a cab facility availed for employees to fulfil a statutory obligation in this regard. The Government has notified such service under Sec 17(5)(b)(iii)(A) of the CGST Act, 2017	36,000

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Calculate the amount of eligible input tax credit for the month of March, 20XX.

Illustration 10(a)

A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in SEZ withoutpayment of GST as the supplies are not taxable.

The finance personnel of BMT Ltd want to know whether they need to carry out reversalof ITC on the testing agency's services to the extent attributable to the SEZ supplies.
Give your comments.

Illustration 10(b)

A flying school imports an aircraft for use in its training activity and takes ITS of the IGSTpaid on the imports.

The departmental audit raises an objection that aircraft fall within the definition of "conveyance" in section 2(34) of the Act and that ITC is not allowed on conveyance.Offer your comments.

Illustration 10(c)

A taxable person is in the business of information technology. He buys a motor vehiclefor use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such motor vehicle?

Illustration 11

With the help of information given below in respect of manufacturer for the month of September 2017. Calculate eligible input tax credit for the month?

Also calculate amount of ITC to be reversed in September 2017 and October 2017, there is no carry forward credit or reversal requirements only current month information is to be considered for calculation purpose

Outward supply

Outward Supply of Taxable goods	Rs. 70,000
Outward supply of Exempted goods	Rs. 40,000
Total turnover	Rs.1,10,000

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Inward supply

Capital goods exclusively used for taxable outward supply GST paid is	Rs.2,000
Capital goods purchased exclusively for exempted outward supply is	Rs.1,800
Capital goods purchased which are used for both taxable and exempted outward supply is	Rs.4,200

Illustration 12

Sarani Weavers, at Pune, Maharashtra is a registered input service distributor and intends to distribute ITC under Section 20 of CGST Act, 2017 for the month of March.

- The following are the details available for such distribution:

Branch	Turnover of the last quarter (Rs.)	ITC specifically applicable to the branch (Rs.)
Ganganagar Branch (Rajasthan)	10,00,000	IGST – 12,000 CGST – 3,000 SGST – 3,000
Madhugiri Branch (Karnataka)	5,00,000	Nil
Kosala Branch (UP)	15,00,000	Nil

Mumbai Branch (Maharashtra)	20,00,000	IGST – 1,50,000 CGST– 15,000 SGST– 15,000

ITC available on input services used commonly by all branches is as under:

- CGST – Rs. 60,000, SGST – Rs. 60,000, IGST – Rs. 1,20,000
- ITC (IGST) of Rs. 10,000 pertaining to March (last year) was inadvertently not distributed.
- Whether the same can be considered for distribution in March this year?
- Madhugiri, Karnataka branch uses input services to manufacture exempted products.
- Turnover excludes duties & taxes payable to Central and State Government.

Determine the manner of input tax distribution.

Illustration 13

Xenon Pvt. Ltd., Agra, is a registered supplier engaged in the manufacture of taxablegoods.

- Goods valued at Rs. 10,50,000 were supplied by the company to Freshbite Pvt. Ltd.,a registered supplier located at Ferozabad, without the cover of an invoice with a fraudulent intent.
- Since the company evaded tax by not issuing the invoice for the supply, a show-cause notice was issued by the proper officer under section 74 requiring the company to pay tax @ 12% [Rs. 1,26,000] and applicable interest and penalty.
- The company paid the tax, interest and penalty after the order was passed by theproper officer.

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Examine the ITC entitlement of Freshbite Pvt. Ltd. in respect of tax of Rs. 1,26,000 paidby Xenon Pvt. Ltd.

Illustration 14

Jumbo Sales Pvt. Ltd., a supplier of readymade garments, announced 'Buy One get Twofree' offer on Men's T-Shirts on Diwali to boost its sales.

You are required to advise the company on the availability of ITC in respect of inwardsupplies used in relation to such supply.

Illustration 15

Ceramity Ltd. has following units:

A. Factory in Tumkur, Karnataka; turnover of Rs. 27 crores in 2019-20;
B. Service centre in Hyderabad, Telangana; turnover of Rs. 1 crore in 2019-20;
C. Service centre in Chennai, Tamil Nadu; turnover of Rs. 2 crores in 2019-20;

- Ceramity Ltd.'s corporate office functions as ISD.
- It has to distribute ITC of Rs. 9 lakhs for May 2020.
- Of this, an invoice involving tax of Rs. 3 lakh pertains to technical consultancy forTumkur unit.

Explain in brief how should the ITC be distributed?

Illustration 16

- A registered supplier of taxable goods supplied goods valued at Rs. 2,24,000 (inclusive of CGST Rs. 12,000 and SGST Rs. 12,000) to Mohan Ltd. under forwardcharge on 15th August for which tax invoice was also issued on the same date.
- The inputs were received by Mohan Ltd. on 15th August.
- Mohan Ltd. availed credit of Rs. 24,000 on 20th September by filing Form GSTR-3Bfor August month.
- However, Mohan Ltd. did not make any payment towards such supply along withtax thereon to the supplier.

Is Mohan Ltd. eligible to avail ITC on such supply?

Discuss ITC provisions, if Mohan Ltd. makes the payment of Rs. 2,24,000 to the supplieron 18th March of next calendar year.

Illustration 17

With reference to the provisions of section 17, examine the availability of ITC in thefollowing independent cases:

(i) MBF Ltd., an automobile company, has availed works contract service for construction of a foundation on which a machinery (to be used in the productionprocess) is to be mounted permanently.

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(ii) Shah & Constructions procured cement, paint, iron rods and services of architectsand interior designers for construction of a commercial complex for one of its clients.

(iii) ABC Ltd. availed maintenance & repair services from "Jaggi Motors" for a truckused for transporting its finished goods.

Illustration 18

- On 25th August, M/s Agarwal & Agarwal, a registered supplier of taxable goods located in Bengaluru (Karnataka), purchased one machine for Rs. 12,39,000 (including IGST) from one supplier of Maharashtra who issued the invoice on thesame date.
- M/s Agarwal & Agarwal put the machinery to use on the same day and availed ITCfor the eligible amount.
- M/s Agarwal & Agarwal used the machine in the process of manufacture of taxablegoods.
- However, M/s Agarwal & Agarwal sold this machine to Mr. Suresh Kumar of AndhraPradesh on 20th August of next year for Rs. 7,50,000 (excluding IGST).

With reference to section 18(6), determine the amount payable, if any, by M/s Agarwal& Agarwal at the time of sale of the machine.

Note: The applicable rate of IGST is 18%.

Illustration 19

Vansh Shoppe is a registered supplier of both taxable and exempted goods, registeredunder GST in the State of Rajasthan.

Vansh Shoppe has furnished the following details for a month:

S. No.	Particulars	Amount (Rs.)
1.	**Details of sales:**	
	Supply of taxable goods	50,00,000
	Supply of goods not leviable to GST	10,00,000
2.	**Details of goods purchased for being sold in the shop:**	
	Taxable goods	45,00,000
	Goods not leviable to GST	4,00,000
3.	**Details of expenses:**	
	Monthly rent payable for the shop	3,50,000
	Telephone expenses paid (Rs. 30,000 for land line phone installed at the shop and Rs. 20,000 towards mobile phone bills of the employees – Mobile phones are given to employees for official use)	50,000
	Audit fees paid to a Chartered Accountant (Rs. 35,000 for filing of income tax return & the statutoryaudit of preceding financial year and Rs. 25,000 for filingof GST return)	60,000
	Premium paid on health insurance policies taken for specified employees of the shop as per company policy.	10,000
	Freight paid to goods transport agency (GTA) for inward transportation of goods not leviable to GST	50,000
	Freight paid to goods transport agency (GTA) for inward transportation of taxable goods	1,50,000
	Goods given as free samples (Not included in Taxablegoods value of Rs. 45,00,000)	5,000

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- All the above amounts are exclusive of all kinds of taxes, wherever applicable.
- All the purchases and sales made by Vansh Shoppe are within Rajasthan.
- All the purchases are made from registered suppliers.
- All the other expenses incurred are also within Rajasthan.
- Assume, wherever applicable, for purpose of reverse charge payable by VanshShoppe, the CGST, SGST and IGST rates as 2.5%, 2.5% and 5% respectively.
- CGST, SGST and IGST rates to be 6%, 6% and 12% respectively in all other cases.
- There is no opening balance in the electronic cash ledger or electronic credit ledger.
- Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

You are required to compute the following:

1. Input Tax Credit (ITC) credited to Electronic Credit Ledger

2. Common credit available for apportionment
3. ITC attributable towards exempt supplies out of common credit
4. Net GST payable from Electronic Cash Ledger for the month

Illustration 20

- M/s XYZ, a registered supplier, supplies the following goods and services for construction of buildings and complexes:
  - excavators for required period at a per hour rate
  - manpower for operation of the excavators at a per day rate
  - soil-testing and seismic evaluation at a per sample rate.
- The excavators are invariably hired out along with operators.
- Similarly, excavator operators are supplied only when the excavator is hired out.
- M/s XYZ receives the following services:
  - Maintenance services for excavators;
  - Health insurance for operators of the excavators;
  - Scientific and technical consultancy for soil testing and seismic evaluation.
- For a given month, the receipts (exclusive of GST) of M/s XYZ are as follows:
  - Hire charges for excavators = Rs. 18,00,000
  - Service charges for supply of manpower for operation of the excavator = Rs.20,000
  - Service charges for soil testing and seismic evaluation at three sites = Rs. 2,50,000
- The GST paid during the said month on services received by M/s XYZ is as follows:
  - Maintenance for excavators = Rs. 1,00,000
  - Health insurance for excavator operators = Rs. 11,000
  - Scientific and technical consultancy for soil testing and seismic evaluation = Rs. 1,00,000

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Compute the net GST payable by M/s XYZ from Electronic Cash Ledger for the givenmonth. Assume the rates of GST to be as under:

- Hiring out of excavators – 12%
- Supply of manpower services and soil-testing and seismic evaluation services – 18% (Ignore CGST, SGST or IGST for the sake of simplicity).

Note: - Opening balance of ITC of GST is nil.

9. REGISTRATION

Contents

- Persons liable for registration [Sec 22]
- Persons not liable for registration [Sec 23]
- Compulsory registration in certain cases [Sec 24]
- Procedure for registration [Sec 25]
- Deemed registration [Sec 26]
- Casual taxable person (CTP) & Non-resident taxable person (NRTP) [Sec 27]
- Amendment of registration [Sec 28]
- Cancellation of registration [Sec 29]
- Revocation of cancellation [Sec 30]

1. INTRODUCTION

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1.1 – Need for Registration

- Under indirect tax regime, without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him.
- Registration ensures the ***seamless flow of input tax credit*** from suppliers to recipients at the national level.

1.2 – Pattern of Registration

- Registration in GST is ***PAN based***.
- Under GST, registrations need to be taken ***State-wise***, i.e. there are no centralized registrations.
- A supplier has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified ***threshold limit***.
- There is ***single registration*** for all the taxes i.e. CGST, SGST/UTGST, IGST and GST compensation cess.

2.PERSONS LIABLE FOR REGISTRATION - SECTION 22

2.1 – Threshold Limits - Section 22

- Every supplier of goods or services or both is required to obtain registration in the State or the Union territory from where he makes the taxable supply if his aggregate turnover exceeds specified threshold limit in a FY.
- Every supplier, whose aggregate turnover ***in a financial year exceeds 20 lakhs***, is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods and services or only service.
- However, the limit will be reduced to ***10 lakhs if the person is carrying out business in Mizoram, Tripura, Manipur, and Nagaland***.
- This limit is for Supply of goods and / or services.
- Further, the limit is ***40 lakhs*** where the supplier is engaged in exclusive supply of goods from ***states other than Mizoram, Tripura, Manipur, Nagaland, Arunachal Pradesh, Meghalaya, Sikkim, Tripura, Puducherry, Telangana and Uttarakhand.***
- For the purposes of section 22(1), a person shall be considered to be engaged exclusively in the supply of goods ***even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.***

Notification No. 10/2019 CT dated 07.03.2019 *– exempts any person who is engaged exclusively in supply of goods and whose aggregate turnover in the financial year does not exceed Rs. 40 lakhs, from the requirement to obtain a registration.*

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Exceptions to this exemption are as follows:

(a) Persons required to take compulsory registration under section 24.

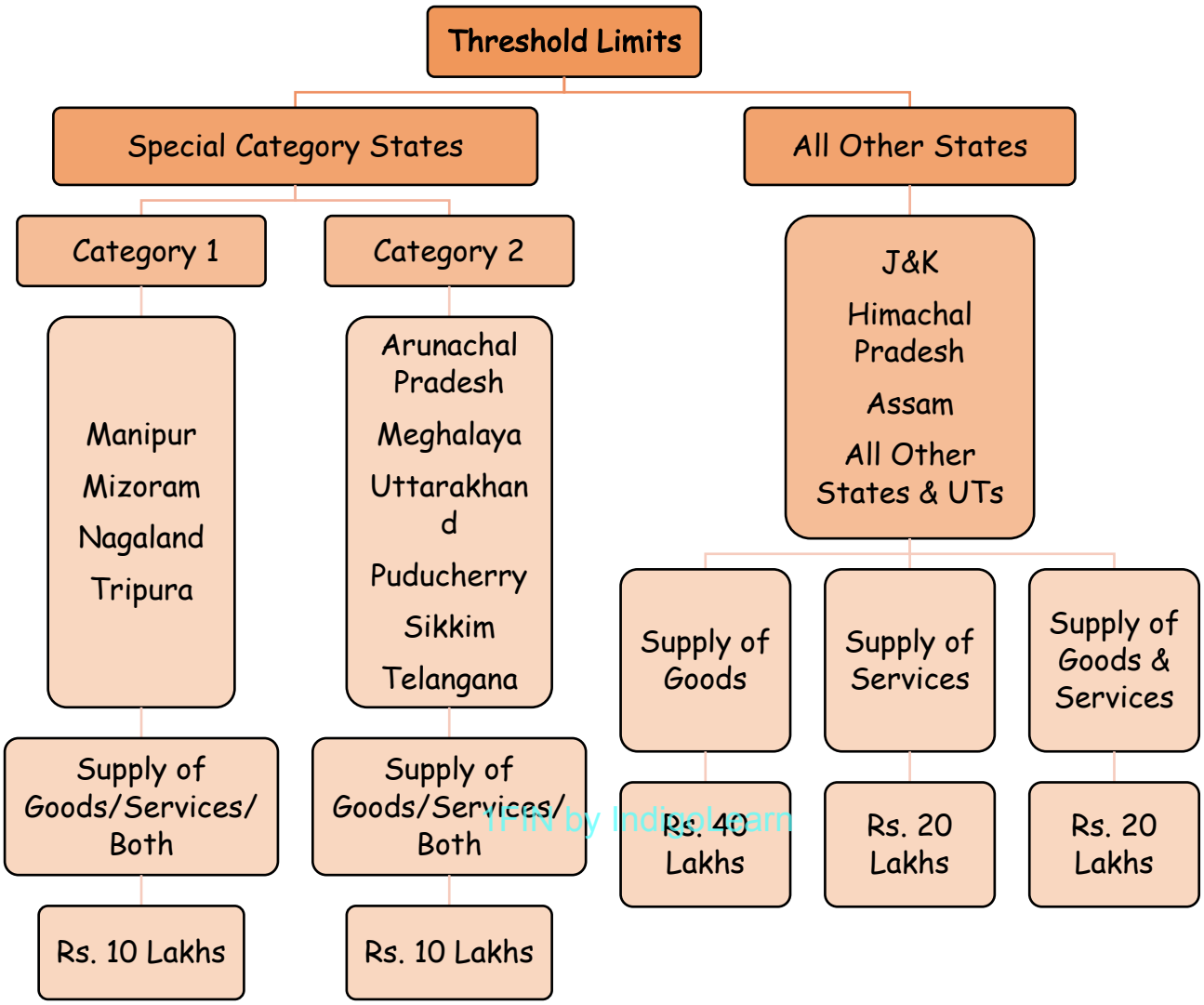
(b) Persons engaged in making supplies of

1. ice cream and other edible ice, whether or not containing cocoa,
2. pan masala,
3. all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes,
4. ***fly ash bricks; fly ash aggregates; fly ash blocks,***
5. ***bricks of fossil meals or similar siliceous earths,***
6. ***building bricks,***
7. ***earthen or roofing tiles.***

(c) Persons engaged in ***making intra-State supplies*** in the States of ***Arunachal Pradesh, Uttarakhand, Meghalaya, Sikkim, Telangana, Puducherry and Special Category States as per section 22 [Nagaland, Mizoram, Manipur, Tripura].***

(d) Inter-State supplies of goods are nevertheless liable to compulsory registration under Section 24 and are already covered in exception (a) above.

(e) Person who has opted for voluntary registration or such registered persons who intend to continue with their registration under the CGST Act.



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2.2 – Aggregate Turnover

Aggregate Turnover [Sec 2(6)]	
Includes	**Excludes**
value of all outward supplies	CGST/SGST/UTGST/IGST/Cess
Taxable Supplies	Value of inward supplies on which tax is payable under RCM
Exempt Supplies	Value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by the way of **interest or discount**
Exports	
Inter-state supplies	
of persons having the same pan be computed on all india basis	

- Outward Supplies taxable under reverse charge would continue to be part of the 'aggregate turnover' of the supplier of such supplies

- Aggregate turnover to include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

2.3 - Special cases

- A person is required to obtain registration with respect to each place of business in India from where a taxable supply has taken place. However, a supplier is not liable to obtain registration in a State/UT from where he makes an exempt/non-taxable supply.
- The threshold limit of a person having places of business in more than one State/UT in India gets reduced to Rs.10 lakh only when such person makes taxable supplies of goods or services or both from any of the Special Category States as per section 22. However, in case he makes exempt/non-taxable supply from a Special Category State and taxable supplies from a State other than Special Category State, the threshold limit shall not be so reduced.
- Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day. ***[Sec 22(2)]***
- Where a business is transferred, whether on account of succession/any other reason [***including transfer/change in the ownership of business due to death of the sole proprietor***] to another person as a going concern, the transferee/successor, is to be registered with effect from the date of such transfer/succession. ***[Sec 22(3)]***
- Where the business is transferred, pursuant to sanction of a scheme/ arrangement for amalgamation/ de- merger of two or more companies, pursuant to an order of a High Court/Tribunal, the transferee is to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order. ***[Sec 22(4)]***

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2.4 - Special cases with regard to place of registration

- He is normally required to obtain single registration in a State/UT. However, where he has ***multiple places of business*** in a State/UT, he has the option either to get a single registration for said State/UT [wherein it can declare one place as principal place of business (PPoB) and other branches as additional place(s) of business (APoB)] or to get separate registrations for each place of business in such State/UT.
- A business entity having ***separate business verticals*** in a state may obtain separate registration for each of its business verticals.

Scenario	Registration required
Same Business in Different States	Mandatory Registration in all States
Taxable supply in one state and Exempt supply in other State	Registration not required in the state of exempt supply
Separate Business verticals in two different States	Mandatory Registration in both the states
Separate Business verticals in Same States	Separate Registration is Optional
Same business in two different places in same time	Separate Registration is Optional

2.5 - Simplified GST registration

- Person whose estimated total liability ≤ Rs. 2,50,000 p.m. Can opt for registration electronically. Based on data analysis & risk parameters, registration granted within 3 working days.
    - Eligibility: Any applicant under Rule 8 (i.e., new GST registration applicant) whose total monthly output tax liability ≤ ₹2.5 lakh may opt for registration under this simplified route.
    - **Aadhaar authentication mandatory.** Persons not opting for Aadhaar authentication (except those notified under Section 25(6D)) are **not eligible.**
    - Only one registration per PAN per State/UT under this rule.
    - After successful Aadhaar authentication, registration to be granted electronically within 3 working days. (5) Withdrawal from this scheme: The taxpayer can exit by filing Form GST REG-32, provided— (a) 3 months' returns filed (if before 1 Apr 2026) (b) 1 tax period's return filed (if after 1 Apr 2026) (c) All returns up to withdrawal date filed.
    - Any change in registration particulars (filed in REG-01) must be updated under Rule 19 before applying for withdrawal.
    - While processing withdrawal application, Aadhaar or biometric verification and document verification may be done based on risk parameters.

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    - Acknowledgment procedure under Rule 8(5) & (6) applies mutatis mutandis to the withdrawal application.
    - Withdrawal application will be verified as per Rule 9.
    - After verification, officer will issue— Order approving withdrawal (Form REG-33), or Order rejecting application (Form REG-05) —within the same time period as Rule 9.
    - Once withdrawal order is issued, taxpayer can report output tax liability exceeding ₹2.5 lakh/month only from the following month.
    - For prior periods (before withdrawal order month), taxpayer cannot revise tax liability beyond ₹2.5 lakh/month.
    - If cancellation proceedings under Section 29 are initiated after withdrawal application, the withdrawal will be rejected, and deemed approval under Rule 9(5) will not apply.

3.1 – Definitions

Casual taxable person [Sec 2(20)] *- A person who occasionally undertakes transactions*

- *Involving supply of goods or services or both,*
- *In the course or furtherance of business,*
- *Whether as principal, agent or in any other capacity,*
- *In a State or a Union territory where he has no fixed place of business.*

Non-resident taxable person [Sec 2(77)] *- A person who occasionally undertakes transactions*

- *Involving supply of goods or services or both,*
- *In the course or furtherance of business,*
- *Whether as principal, agent or in any other capacity,*

CTP	NRTP
Does not have a fixed place of business in the State/UT where he undertakes supply though he might be registered with regard to his fixed place of business in some other State/UT	Does not have fixed place of business/residence in India at all
Has to undertake transactions in the course or furtherance of business	The business test is absent in the definition so no such condition
He will be considered as distinct person	No such condition

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3.2 – Period of validity of registration

- Registration Certificate granted to CTP/NRTP will be valid for:
  - Period specified in the registration application, or
  - 90 days from the effective date of registration

  whichever is earlier.
- The 90 days period ***can be extended further by a period not exceeding 90 days*** by making an application before the end of the validity of registration granted to him(CTP/NRTP)
- CTP and NRTP will make taxable supplies only after the issuance of the certificate of registration.
- Provisions relating to verification of application and grant of registration [under rules 9 and 10] will apply mutatis mutandis, to an application for registration filed by NRTP.

3.3 - Advance deposit of tax

- At the time of submitting the registration application, CTP/NRTP are required to make an ***advance deposit of tax*** in an ***amount equivalent to the estimated tax liability*** of such person for the period for which the registration is sought.

- Such person will get a TRN for making an advance deposit of tax which shall be ***credited to his electronic cash ledger***. An acknowledgement of receipt of application for registration is issued only after said deposit.
- Where ***extension of time is sought***, such registered taxable person will deposit an ***additional amount of tax*** equivalent to the estimated tax liability of such person for the period for which the extension is sought

3.4 - Special registration procedure the special registration procedure pertaining to CTP and NRTP are as follows:

- Both CTP and NRTP have to ***compulsorily get registered*** under GST irrespective of the threshold limit, ***at least 5 days prior to commencement of business***.
- Registration is granted to them or period of operation is extended, only after they make advance deposit of the estimated tax liability.
- As per section 25(6), every person must have a ***PAN*** to be eligible for registration. Since NRTP will generally not have a PAN of India, he may be granted registration on the basis of other prescribed documents
    - He has to submit a ***self-attested copy of his valid passport*** along with the application signed by his authorized signatory who is an Indian Resident having valid PAN.
    - However, in case of a ***business entity incorporated*** or established outside India, the application for registration shall be submitted along with its ***tax identification number or unique number*** on the basis of which the entity is identified by the Government of that country or its PAN, if available.
    - Application will be submitted by NRTP in a different prescribed form whereas CTP will submit the application for registration in the normal form for application for registration i.e. Form GST REG 01 and his registration of CTP will be a PAN based registration.

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4. PERSONS NOT LIABLE FOR REGISTRATION - SECTION 23

4.1 - List of persons not liable for registration

- Any person engaged exclusively in the business of supplying goods or services or both that are wholly exempt from tax under CGST Act/IGST Act.
- Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or are outside the purview of GST like alcoholic liquor for human consumption and petroleum products.
- An agriculturist to the extent of supply of produce out of cultivation of land is also not liable to registration.

Agriculturist [Sec 2(7)] *– means an individual/HUF who undertakes cultivation of land*

- *by own labour, or*
- *by the labour of family, or*
- *by servants on wages payable in cash or kind or*
- *by hired labour under personal supervision or the personal supervisionof any member of the family.*

- By improving the performance, accuracy and efficiency of the key business processes, the entity is made more efficient and responsive to Customer and Employee needs.
- ***Specified category*** of persons notified by the Government exempted from obtaining registration

1) The benefit of not being liable to registration is only restricted to the agriculturists who are individuals or HUFs.
2) Further, if an agriculturist is also engaged in making any supply other than supply of produce out of cultivation of land, he shall be liable to registration based on applicable threshold limit

4.1.1 - Specified category of persons notified by Government

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1. Persons making only reverse charge supplies.
   - Persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3)
2. Persons making inter-State supplies of taxable services up to Rs.20 lakh. The persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, ***not exceeding an amount of Rs.20 lakh in a financial year*** have been exempted from obtaining compulsory registration. However, the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of ***Rs. 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland***
3. Persons making inter-State supplies of taxable services up to Rs.20 lakh through ECO.
   - Any person supplying services through ECO (other than supply specified u/s 9(5) of CGST Act) with aggregate turnover up to 20 lacs is exempted from obtaining compulsory registration. The threshold limit is reduced to 10 lakhs in case of Mizoram, Tripura, Manipur and Nagaland.
4. ***Persons making inter-State taxable supplies of notified handicraft goods up to Rs. 20,00,000 (Rs.10,00,000 as the case may be).***
   - This includes:

- Persons making inter-State taxable supplies of ***Notified handicraft goods***.
- Persons making inter-State taxable supplies of ***notified products*** when made by craftsmen predominantly by hand even though some machinery may also be used in the process.
- Condition to be fulfilled - ***Such persons has obtained a PAN and have generated an e-way bill.***

5. ***Casual Taxable Persons making inter-State taxable supplies of notified handicraft goods up to Rs. 20 lakhs ((Rs.10,00,000 as the case may be.***

- This includes:
  - CTPs making inter-State taxable supplies of ***Notified handicraft goods***.
  - CTPs making inter-State taxable supplies of ***notified products*** when made by craftsmen predominantly by hand even though some machinery may also be used in the process.
  - Condition to be fulfilled - ***Such persons has obtained a PAN and have generated an e-way bill.***

6. ***With effect from 01.10.2023, Notification No. 34/2023 CT dated 31.07.2023*** provided that the persons making supplies of goods through an ***ECO*** who is required to collect TCS under section 52 and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the threshold limit in accordance with the provisions of section 22(1), are ***exempted from obtaining registration***, subject to the following conditions, namely:

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- such persons shall ***not make any inter-State supply*** of goods;
- such persons shall ***not make supply*** of goods through ECO ***in more than one State/Union territory;***
- such persons shall be required to have a ***PAN issued*** under the Income-tax Act, 1961;
- such persons shall, before making any supply of goods through ECO, ***declare on the common portal***:
  1. their ***PAN***
  2. ***address*** of their place of business and
  3. ***State/UT in which such persons seek to make such supply***,

  which shall be subjected to validation on the common portal;
- such persons have been ***granted an enrolment number*** on the common portal on successful validation of the PAN declared above;
- such persons shall ***not be granted more than one enrolment*** number in a State/UT;
- no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and

- where such persons are subsequently granted registration under section 25, the enrolment number shall cease to be valid from the effective date of registration.

5. COMPULSORY REGISTRATION IN CERTAIN CASES - SECTION 24

- There are some cases wherein a supplier is compulsorily required to obtain registration even though his aggregate turnover does not exceed the applicable threshold limit
- However, certain exemptions from registration have already been discussed under section 23. Thus section 24 has to be understood considering sec 23.

5.1 - List of cases where registration is mandatory

1. Persons making any ***inter-State taxable supply***.
   - However, threshold limit of Rs. 20 lakh (and 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of inter-State supply of taxable services and of notified handicraft goods.
2. ***Casual taxable persons (CTP)*** making taxable supply.
   - However, threshold limit of Rs. 20 lakh(Rs.10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of CTP who is making inter-State taxable supplies of notified handicraft goods and availing the benefit of exemption from registration as mentioned in point (i) above
3. Persons who are required to ***pay tax*** under ***reverse charge***.
   - However, persons engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis are exempt from registration.
4. ***Non-resident taxable persons (NRTP)*** making taxable supply.
5. ***E-commerce***: (i) Every ECO (Electronic Commerce Operator) who is required to collect tax at source under section 52,
6. Persons who are required to ***deduct tax under section 51***, whether or not separately registered under this Act.
7. Persons who make taxable supply of goods or services or both ***on behalf of other taxable persons*** whether as an ***agent*** or otherwise.
   - A ***commission agent*** will be liable to get mandatorily registered under this provision only when both the following conditions are satisfied:
     - the principal should be a taxable person; and
     - the supplies made by the commission agent should be taxable. However, generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist who is not a taxable person if he supplies produce out of cultivation of land
8. ***Input Service Distributor***, whether or not separately registered under this Act.

9. Every person supplying online information and data base access or retrieval ***(OIDAR) services*** from a place outside India to a person in India, other than a registered person.

10. Such other person or class of persons as may be ***notified by the Government*** on the recommendations of the Council.

11. Mandatory registration for every person supplying ***online money gaming*** from a place outside India to a person in India - Since online money gaming has been made taxable by amending Schedule III by the CGST Amendment Act, 2023, with effect from 01.10.2023, every person supplying online money gaming from a place outside India to a person in India are required to obtain registration compulsorily.

6. PROCEDURE FOR REGISTRATION – SECTION 25 & 26

6.1 – Time limit – When to apply for registration – Section 25(1)

Persons	When to apply
Person who is liable to be registered U/s 24	Within 30 days from the date on which he becomes liable to registration
A CTP or NRTP	At least 5 days prior to commencement of business

6.2 – Where to take Registration – Section 25(2)

- Registration needs to be taken State-wise. A business entity having its branches in multiple States will have to take separate State-wise registration for the branches in different States.

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- Within a State, an entity with different branches shall be granted single registration wherein it can declare one place as principal place of business (PPoB) and other branches as additional place of business (APoB).
- Within a State, an entity with different places of business ***may opt*** for separate registration for each such place of business.
- When different registrations are granted to a single entity, each shall be treated as a ***distinct person*** and shall be liable to tax for supply goods/services/both made to one another through issue a tax invoice/bill of supply.

6.3 - Application for registration by Special Economic Zone (SEZ) [Second proviso to section 25(1)]

- SEZ is a geographically bound zone where the economic laws relating to export and import are more liberal as compared to other parts of the country. SEZ is considered to be a place outside India for all tax purposes.
- A person having unit in SEZ/an SEZ developer will have to make a separate application for registration as distinct from his place of business located outside SEZ in the same State/UT.

- Where two units of a tax payer are located in same State/UT - one in SEZ and another outside SEZ. In that case, ***separate registrations have to be obtained for each of the two units as separate places of business***.

6.4 - Voluntary registration - Section 25(3)

- A person who is not liable to be registered under section 22 or section 24 may get himself registered voluntarily.
- In case of voluntary registration, all provisions of this Act, as are applicable to a registered person, shall apply to voluntarily registered person.
- Once a person obtains voluntary registration, he has to pay tax even though his aggregate turnover does not exceed Rs. 40 lakhs/Rs.20 lakh/Rs. 10 lakh as the case may be.
- Voluntary registration is usually obtained by the business for ensuring seamless flow of credit to their customers.

6.5 - Unique Identity Number (UIN) [Section 25(9) & (10) read with rule 17]

- Upon registration, the following persons are granted UIN instead of GSTIN:
    - Any specialized agency of the United Nations Organization or
    - Any Multilateral Financial institution and organization as notified under the United Nations (Privileges and Immunities) Act, 1947,
    - Any consulate or
    - Any embassy of foreign countries and
    - Any other person notified by the Commissioner

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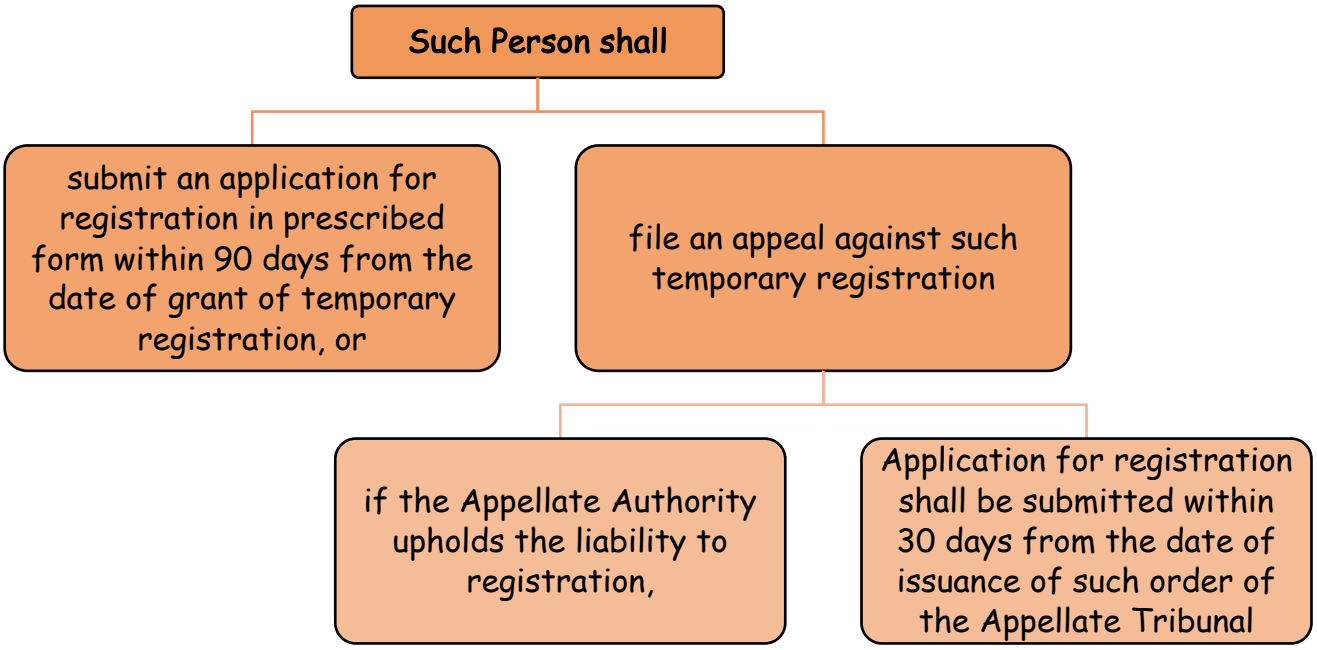
- The proper officer may, upon submission of an application in prescribed form or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a UIN to the said person
- UIN is assigned and registration certificate issued ***within 3 working days*** from the date of submission of application.
- UIN granted is a centralized UIN i.e. it shall be applicable to the territory of India. A person having UIN is not registered person and thus, is not a taxable person
- This UIN is needed for claiming refund of taxes paid on notified supplies of goods and/or services received by them, and for such other purpose as may be notified.
- Any person making supplies to such UN bodies, must treat the transactions as B2B and mention their UIN in the invoice. Only then such entities can claim their refund.

6.6 - Suo-motu registration by proper officer [Section 25(8) read with rule 16]

- Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer ***may register the said person on a temporary basis and issue an order in prescribed form.***



- GSTIN thereafter granted shall be effective from the date of order of proper officer granting temporary registration.

6.7 - Procedure for registration

Step 1 - Apply for registration in Form GST REG 01

- The application for registration has to be submitted electronically at the GST Common Portal – www.gst.gov.in. Its common portal for all matters related to GST and a common platform for everyone.

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- The application should be duly signed or verified through Electronic Verification Code (EVC) [Aadhar OTP].
- A registered person opting to obtain separate registration for a place of business shall submit a separate application in Form GST REG 01 in respect of such place of business.
- The application for registration in GST Form REG 01 is divided into two parts - Part A and Part B.

Step 2 – Verification of Part A details

- Permanent Account Number validated online by Common Portal from CBDT database (PAN is mandatory to be eligible for grant of registration. However A Non-Resident Taxable Person (NRTP) may be granted registration on the basis of other prescribed documents)
- Mobile number and email verified through one time password sent to it.
- Details of state where registration is required is mentioned.

Step 3 – Generation of TRN

- On verification of PAN, mobile number and email id Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.
- Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.
- Details to be mentioned in Part B –
    - Legal name
    - Trade name
    - Address of Principal place of business
    - Address of Additional place of business
    - Details of Partners or Directors
    - HSN / HSC code
    - Bank account details
- A Causal Taxable Person (CTP) applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger.
- Part B is e-verified through mobile OTP. In case of a company Digital signature is mandatory.

Step 4 – Generation of acknowledgement

- On receipt of such application, an acknowledgement in the prescribed form (GST REG 02) shall be issued to the applicant electronically.
- To A Causal Taxable Person (CTP) an acknowledgement is issued only after said deposit.

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Step 5 – Application forwarded to proper officer

- Proper Officer examines the application and accompanying documents.

Step 6 A – Registration granted

- If the application and accompanying documents are found in order, Proper officer will grant registration certificate in GST REG 06.
- It is granted within 7 working days from the date of submission of application.

Step 6 B – Issuing notice for further information

- If the application and accompanying documents are not found in order, Proper officer will issues notice electronically (in form GST REG 03), within 7 working days from application date thereby seeking clarification/ information or documents from the applicant.
- The applicant is required to furnish the necessary information or documents within 7 working days from receipt of such notice in the prescribed form (GST REG 04)

- If proper officer is satisfied with it within 7 working days from the date of receipt of information/ clarification/ documents, he will grant the registration certificate. (in GST REG 06)
- If he is not satisfied, he will reject the application for reasons to be recorded in writing in form GST REG 05.

Step 7 - Deemed Approval of Application

- If the proper officer fails to take any action -
    - within 7working days from the date of submission of application, or
    - within 7 working days from the date of receipt of clarification, information. or documents furnished by the applicant,
      the application for grant of registration shall be deemed to have been approved.

Step 8 – Issuance of registration certificate and Grant of GSTIN

- Where the application for grant of registration has been approved, the registration certificate showing the principal place of business (PPoB) and additional place(s) of business (APoB) is made available to the applicant on the Common Portal.
- It is duly signed or verified through EVC by the proper officer.
- A Goods and Services Tax Identification Number (referred as "GSTIN") i.e., the GST registration no. is communicated to applicant, within 3 days after the grant of registration.

Summary of Form Numbers

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GST Form No.	Purpose
REG-01	Application for registration
REG-02	Acknowledgement
REG-03	Notice by PO for additional documents
REG-04	Reply to the notice given in REG-03
REG-05	Order of rejection
REG-06	Grant of registration

6.8 - Procedure for Registration

Procedure for registration

Part I

Every person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN) and State/UT in **Part A of FORM GST REG-01** on GST Common Portal.

PAN is validated online by Common Portal from CBDT database and ***is also be verified through separate OTPs sent to the PAN linked mobile number and e-mail address.***

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.

Part B of application contains the details, such as, constitution of business, jurisdiction, option for composition, date of commencement of business, reason to obtain registration, address of PPoB and nature of activity carried out therein, details of APoB, details of bank account(s), details of authorized signatory, aadhaar authentication, etc.

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A **Casual Taxable Person (CTP)** applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.*

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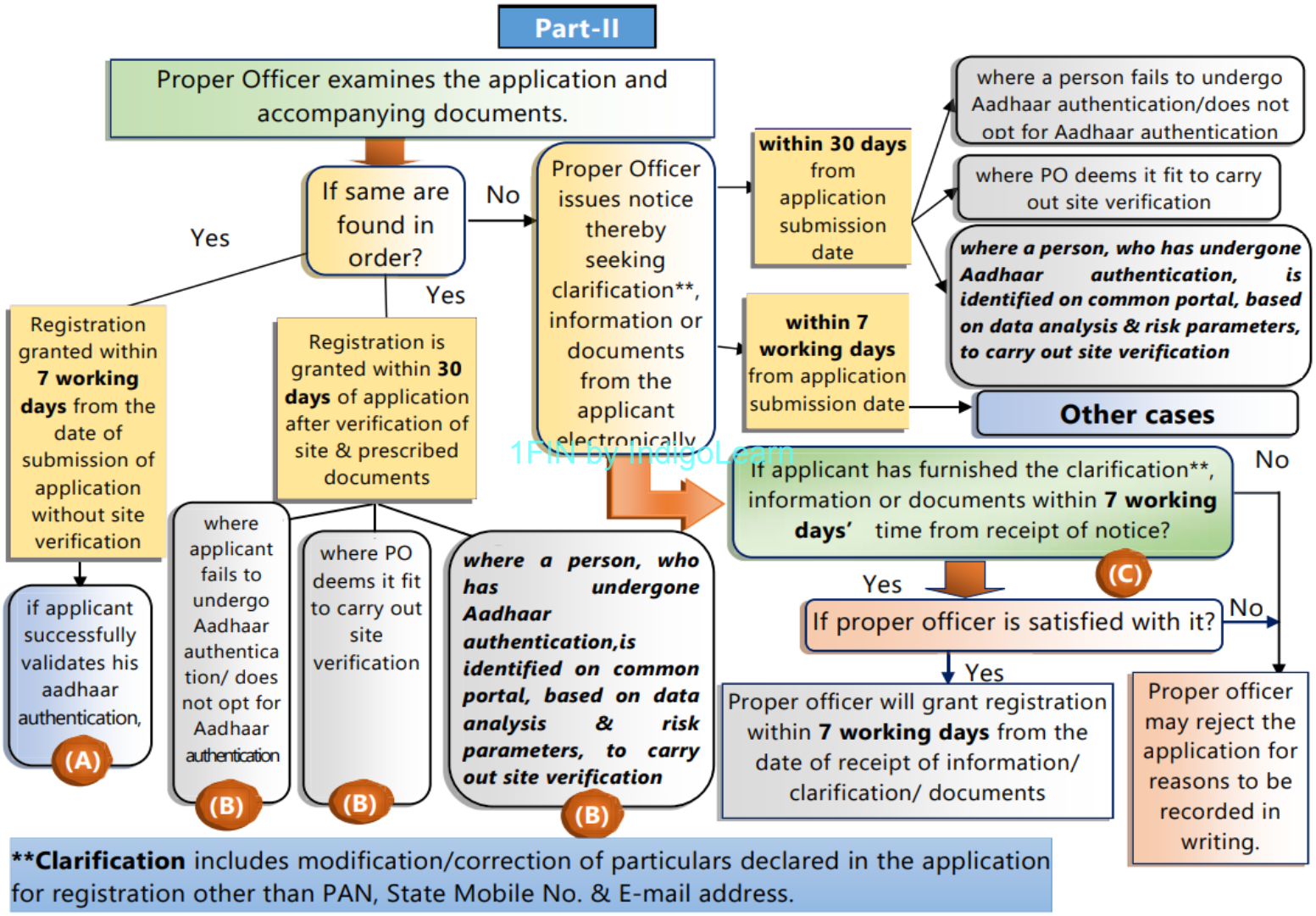
Application shall be forwarded to the Proper Officer.

The procedure after receipt of application by the Proper Officer is depicted in Part II.



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7.1 – Physical Verification of business Premises

- Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after grant of registration, he may get such verification done.
- The verification report along with other documents, including photographs, shall be uploaded in the prescribed form on the GST Common Portal, within 15 working days following the date of such verification.
- Requirement of the presence of the applicant for physical verification of business premises done away with –
  - a person, fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication; or
  - a person, who has undergone Aadhaar authentication, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or
  - the proper officer deems it fit to carry out physical verification of places of business,

  the registration shall be granted within 30 days of submission of application, after physical verification of the place of business, in the presence of the said person in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit. Thus, now, ***presence of the applicant is not required for physical verification.***

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  Corresponding amendment has been made in rule 25. Substituted rule 25 provides as follows:

  i. ***Where the proper officer is satisfied that the physical verification of the place of business of a person is required AFTER the grant of registration***: he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal ***within a period of 15 working days following the date of such verification.***

  ii. ***Where the physical verification of the place of business of a person is required BEFORE the grant of registration*** in the circumstances specified in the proviso to rule 9(1) [as given above]: the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common ***portal at least 5 working days prior to the completion of the time period specified*** in the said proviso.

  [Effective from 04.08.2023] [Notification No. 38/2023 CT dated 04.08.2023]

7.2 - Display of registration certificate and GSTIN on the name board

- Every registered person shall display his registration certificate in a prominent location at his PPoB and at every APoB.
- The GSTIN also has to be displayed on the name board exhibited at the entry of his PPoB and at every APoB.

7.3 – Delay in submission of bank account details

- The requirement to furnish bank details at the time of application for registration, has been relaxed by inserting a new rule 10A to CGST rules.
- The registered person is allowed to furnish the information regarding bank details after obtaining registration certificate and GSTIN
    - Within 30 days from the grant of registration or
    - Before furnishing statement of outward supplies in GSTR 1/ IFF u/s 37 Whichever is earlier.
- This relaxation is not available for those
    - Who have been granted registration as TDS deductor or
    - Who have been granted registration as TCS collector or
    - Who has obtained suo motto registration (voluntary registration)
- If a person violates the provisions of ***Rule 10A***, his GST registration is liable to be cancelled.

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- Further, third proviso to rule 21A(4) has been inserted to provide for ***automatic revocation of suspension*** in such cases upon compliance with provisions of rule 10A.
- Said person ***shall be intimated*** by ***sending a communication to his e-mail*** address provided at the time of registration or as amended from time to time. In this intimation for suspension and notice for cancellation of registration, the said differences and anomalies are highlighted and said person is asked to explain, within a period of ***30 days***, as to why his registration shall not be cancelled.
- It is further provided that where the registration has been suspended as above for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be ***revoked upon compliance with the provisions of rule 10A.***
- ***[Effective from 04.08.2023] [Notification No. 38/2023 CT dated 04.08.2023]***

7.4 - Deemed Approval of Application

- If the proper officer fails to take any action in the following cases within the stipulated time, the application for grant of registration shall be deemed to have been approved-

in cases where a person successfully undergoes authentication of Aadhaar number or is exempt from Aadhaar authentication	•within a period of 7 working days from the date of submission of application
in cases where a person fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication	•within a period of 30 days from the date of submission of application
in cases where Proper Officer issues notice seeking clarification, information or documents from the applicant	•within 7 working days from the date of receipt of clarification, information or documents furnished by the applicant

7.5 – Effective Date of Registration

Application for Registration submitted	Effective date of registration is
Within 30 days from the date the Person who is liable to be registered	Date on which he becomes liable to registration
After 30 days from the date the Person who is liable to be registered	Date of grant of Registration

Benefits of applying for registration within 30 days

1. Collection of GST from Customers

- The registered person can issue ***revised invoice u/s 31*** to his customers for the supplies made between the effective date of registration and date of grant of registration and ***collect GST from his customers***.

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- Such revised invoice needs to be issued within 1 month from the date of grant of registration. The customers can claim input credit on such invoice (unless he is unregistered dealer).

2. Claiming of input tax credit

- Such registered person can ***claim input tax credit u/s 18(1)(a)*** available at the time of registration on
  - Inputs held in stock
  - Inputs contained in work in progress
  - Inputs contained in Finished goods held in stock
- Thus, the person who applies for registration after 30 days of becoming liable to registration will have to pay tax on the supplies made from the date of becoming so liable to the effective date of registration but however, he cannot claim it from his customers. Nor can he claim the ITC.

8. AADHAAR AUTHENTICATION - SECTION 25(6A), (6B), (6C) & (6D) READ WITH RULES 8, 9 AND 25

- With effect from 21.08.2020, Aadhaar authentication is mandatory for the new applicants in order to be eligible for grant of registration.

- Aadhaar Authentication process has been introduced for the persons applying for GST registration as normal taxpayer/ composition/ casual taxable person/ Input Service Distributor (ISD)/ SEZ Developer/ SEZ Unit etc, in Form GST REG 01.
- Subsequently, existing registrants will also be required to undergo Aadhaar authentication otherwise their registration shall be deemed to be invalid.

8.1 - Persons required to undergo Aadhaar authentication

- ***New applicant*** - Every (i) individual applicant or (ii) an applicant, other than an individual, shall undergo authentication/furnish proof of possession of Aadhaar number, in the manner prescribed in rule 8.
- Date of submission of the application in such cases shall be earlier of:
  - the date of authentication of the Aadhaar number, or
  - 15 days from the submission of the application in Part B of Form GST REG-01
- In case applicant is an individual, he shall undergo authentication of his own aadhaar number.
- In case applicant is other than individual, the authentication will be of aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other notified class of persons [authorised signatory of all types, Managing and Authorised partners of a partnership firm and Karta of a Hindu Undivided Family, have been so notified.

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- ***Persons already registered*** - Every registered person shall undergo authentication/furnish proof of possession of Aadhaar number, in prescribed form and manner and within the prescribed time

8.2 - Where Aadhaar number is not assigned

- If an Aadhaar number is not assigned to a ***new applicant*** – such individual/person/class of persons shall be offered alternate and viable means of identification in the manner specified in rule 9.
- Where a person fails to undergo authentication of aadhaar number or does not opt for authentication of Aadhaar number, the registration shall be granted only after physical verification of the principal place of business in the prescribed manner.
- However, in lieu of the physical verification of the place of business, the proper officer may carry out the verification of such documents as he may deem fit. For this, he needs to record the reasons in writing and needs to take the approval of an officer not below the rank of Joint Commissioner.
- Further, in such case, a notice (in prescribed form) seeking clarifications/ information/ documents from the applicant may be issued by the proper officer not later than 30 days from the submission of the application for registration. Further, registration would be granted only after physical verification of premises and the verification report along with the other

documents, including photographs, shall be uploaded in FORM GST REG 30 on the common portal within a period of fifteen working days following the date of such verification.

- In case where registration is to be granted after physical verification of the premises of a person then the application for grant of registration shall be deemed to have been approved if the proper officer fails to take any action within a period of 30 days from the date of submission of the application
- In case of failure to undergo aadhaar authentication/furnish proof of possession of Aadhaar number/furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

8.3 - Persons/class of persons exempt from aadhaar authentication

- Section 25(6D) stipulates that above provisions shall not apply to such person or class of persons or any State or Union territory or part thereof, as may be notified.
- Following have been notified in this regard:
  - A person who is not a citizen of India
  - Department or establishment of State Government or Central Government
  - Local authority
  - Statutory body
  - Public Sector Undertaking
  - A person applying for Unique Identity Number

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8.4 - How aadhaar authentication is done?

- Once registration application is submitted, GST system sends "link" to the concerned persons at their GST registered mobile numbers and email ids mentioned in the GST application, for the aadhaar authentication.
- On clicking the verification link, a window for Aadhaar Authentication will open where they have to enter Aadhaar Number and the OTP received by them on the mobile number linked with Aadhaar.
- Taxpayers need to complete Aadhaar authentication of all Promoters/ Partners/ Authorized Signatories/ Karta etc. as mentioned in the application to avail this option.
- On successful authentication, demographic data of the persons is fetched from Aadhaar to GST System.

9. DEEMED REGISTRATION - SECTION 26

- Registration under GST is single registration for all the taxes i.e. CGST, SGST/ UTGST, IGST and cesses.
- Grant of registration/UIN under any SGST Act/ UTGST Act is deemed to be registration/UIN granted under CGST Act provided application for registration has not been rejected under CGST Act.

- Further, rejection of application for registration/UIN under SGST Act/UTGST Act is deemed to be rejection of application for registration under CGST Act.

10. AMENDMENT OF REGISTRATION – SECTION 28

- A registered person may need to make some changes/amendments in the registration application. In this regard, there are two categories of details in registration application – core and non-core fields.
- The procedure of change depends on this category of fields.
- ***Core fields*** are
    - Legal name of the business, (if there is no change in pan)
    - Addition / deletion of stakeholders (Details of directors/ partners/Karta/ Executive officer
    - PPOB (other than change in State) or APOB (other than change in State).
- All other fields are ***non-core fields*** like name of day-to-day functionaries, e- mail Ids, mobile numbers, bank account details etc.

10.1 - Procedure for change in core field

- ***Application within 15 days*** - Where there is any change in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, within 15 days of such change, along with documents relating to such change at the Common Portal.

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- ***Additional information by PO*** - The proper officer may, within 15 days, send a notice seeking additional documents substantiating the change.
- ***Response to notice*** - The registered person has to respond within 7 days from the receipt of such notice.
- ***Approve / reject within 7 days*** - On the basis of information furnished or as ascertained by him, the PO may approve or reject amendments in the registration particulars in the prescribed manner.
- ***Opportunity of being heard*** - The proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.
- ***Deemed approval*** – if the proper officer fails to take any action,-
    a) within a period of 15 working days from the date of submission of the application, or
    b) within a period of 7 working days from the date of the receipt of the reply to the show cause notice,
- The certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

- Any rejection or approval of amendments under the SGST/UTGST Act shall be deemed to be a rejection or approval under this Act.
- ***PAN based application of amendment*** - Change of

  a) Legal name of business

  b) Addition/Deletion of stakeholders

  these two particulars shall be applicable for all registrations of a registered person obtained under provisions of this Chapter on same PAN.
- Effective date of amendment - Such amendment shall take effect from the date of occurrence of event warranting such amendment.

10.2 - Procedure for change in non-core field

- ***Application within 15 days*** - Where there is any change in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, within 15 days of such change, along with documents relating to such change at the Common Portal.
- ***Amendment made*** - Registration certificate shall stand amended upon submission of the application for amendment on the Common Portal

10.3 - Other Key points related to amendment

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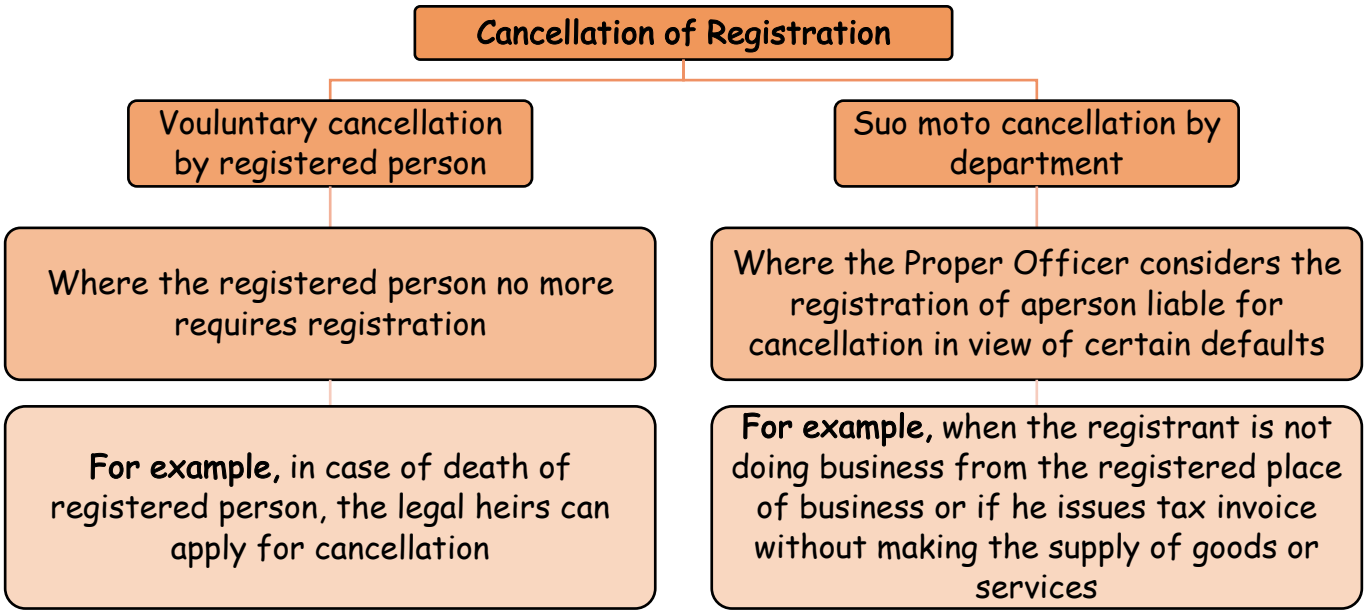
- ***Amendment with retrospective effect*** - Any particular of the application for registration shall not stand amended with effect from a date ***earlier than date of submission of application*** for amendment on common portal except with ***order of Commissioner*** for reasons to be recorded in writing and subject to ***conditions specified by Commissioner*** in the said order.
- ***Change in PAN*** - Application for amendment of registration cannot be filed for change in PAN because GST registration is PAN-based. One needs to make fresh application for registration in case there is change in PAN. Thus. where a ***change in the constitution of any business*** results in change of PAN of a registered person, the said person shall ***apply for fresh registration.***
- ***Change in State*** - Application for amendment of registration form cannot be filled if there is change in place of business from one State to the other because GST registrations are State-specific. If one wishes to relocate his business to another State, he must voluntarily cancel his current registration and ***apply for a fresh registration*** in the State he is relocating his business.



11.1 - Circumstances when the registration can be cancelled either suo motu by proper officer or on an application of the registered person or his legal heirs (in case death of such person)

1. Business discontinued

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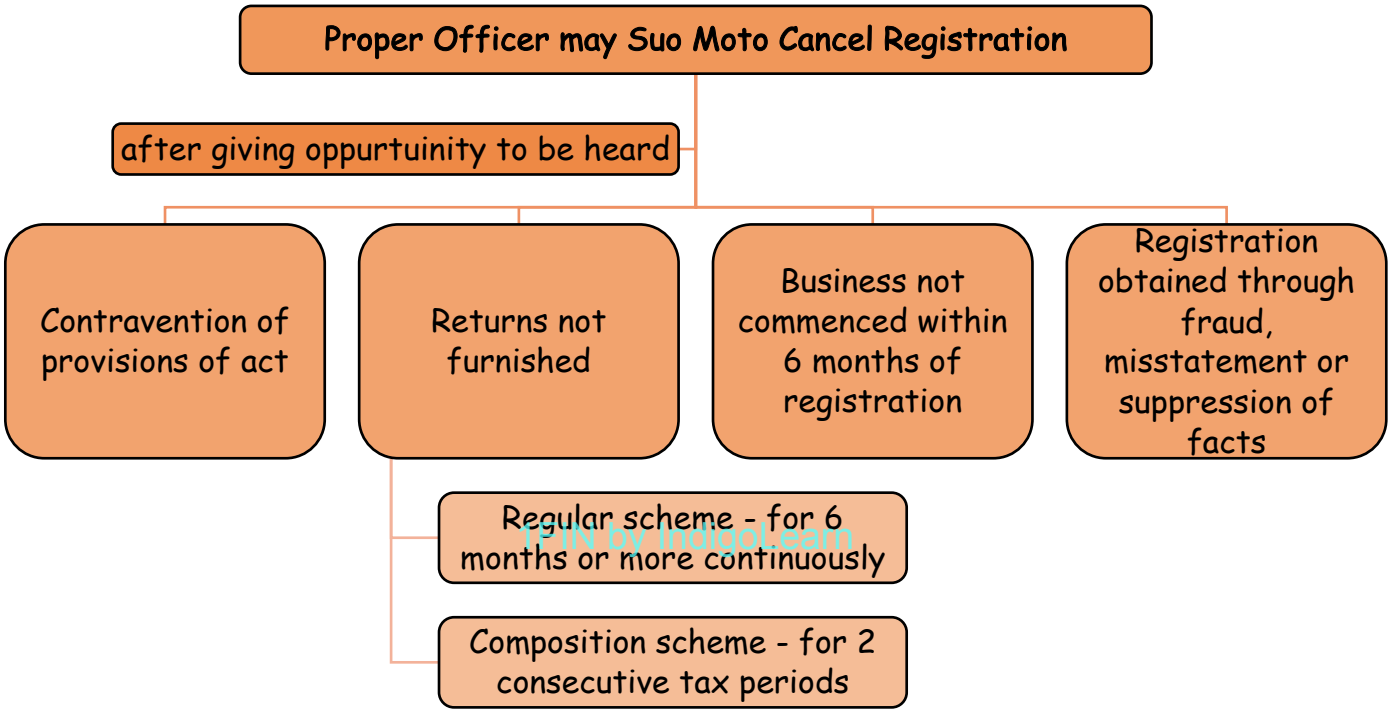
2. Transferred fully for any reason (like amalgamation, demerger or death of the proprietor)
3. Change in the constitution of the business
4. Taxable person (other than voluntarily registered person) who is no longer liable to be registered under section 22 or section 24

11.2 - Circumstances when the proper officer can cancel registration on his own

1. A registered person has contravened the prescribed provisions -
    - He does not conduct any business from the declared place of business, or
    - He issues invoice/bill without supply of goods/services in violation of the provisions of this Act, or the rules made thereunder.
    - He violates the provisions of section 171 of the CGST Act. (Section 171 of the CGST Act, 2017 contains provisions relating to anti-profiteering measure)
    - Violates rule 10A provisions
    - Avails ITC on violation of Section 16
    - furnishes the details of outward supplies in Form GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods
    - violates the provision of rule 86B
2. A registered person has not filed returns for continuous 6 months.

3. A person who opted for composition levy has not filed return for 2 consecutive tax periods.
4. Registration was obtained by means of fraud, willful misstatement or suppression of facts
5. Voluntarily registered person has not commenced the business within 6 months from the date of registration

- Registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit.
- However, PO shall not cancel the registration without giving the person an opportunity of being heard.

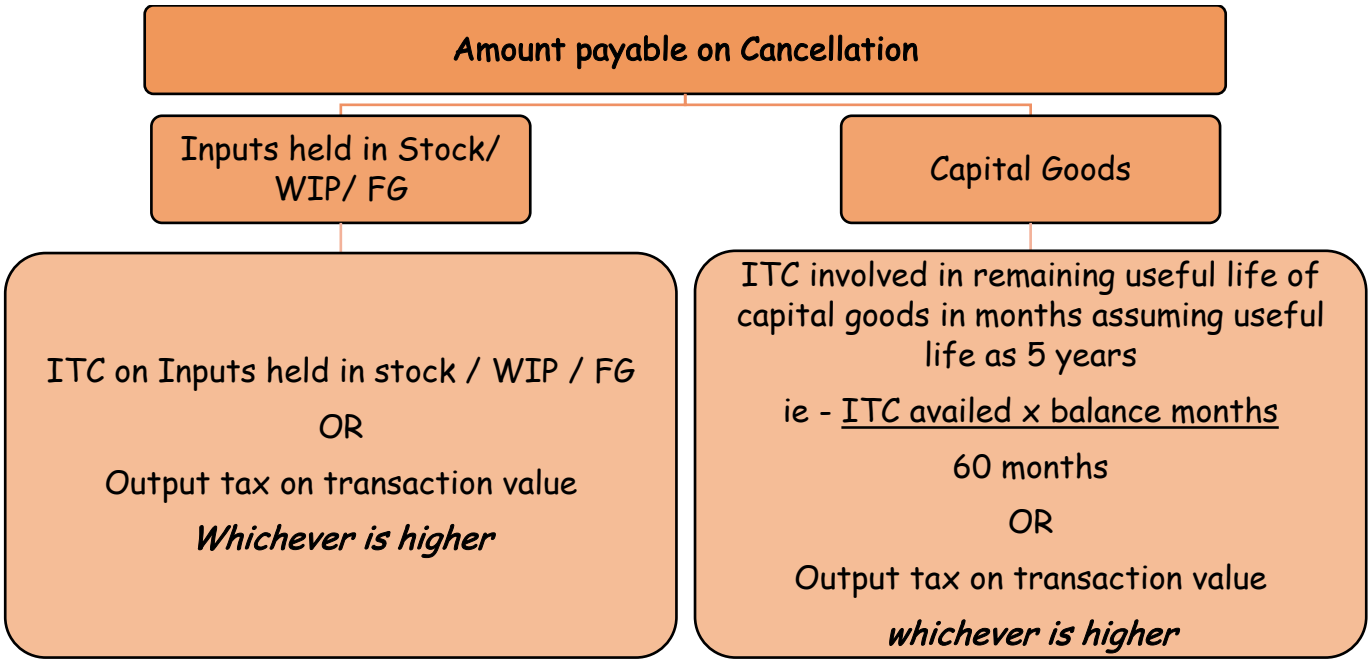


- If any registered person furnishes the details of outward supplies in Form GSTR-1 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods then such registered person registration shall be liable for cancellation.

11.3 - Procedure for cancellation of registration

- ***Application within 30 days*** - A registered person seeking cancellation of registration shall electronically submit the application for cancellation of registration in prescribed form ***within 30 days of occurrence of the event warranting cancellation***.
- ***Furnish details of stock*** - He is required to furnish in the application the ***details of inputs*** held in stock or inputs contained in semi-finished/finished goods held in stock ***and of capital goods held in stock on the date from which cancellation of registration is sought***, liability thereon, details of the payment, if any, made against such liability and may furnish relevant documents thereof.

- ***Amount payable on inputs and capital goods*** - A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount as computed below:



- ***Cancellation order within 30 days*** -Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered, proper officer shall issue the order of cancellation of registration within 30 days from the date of submission of application for cancellation.

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- ***show cause notice in case of Suo-motu cancellation*** - Where the proper officer cancels the registration suo-moto, he shall not cancel the same without giving a show cause notice and without giving a reasonable opportunity of being heard, to the registered person.
- Response within 7 days - The reply to such show cause notice (SCN) has to be submitted within 7 days of service of notice.
- ***Order passed*** – In the following cases, the proper officer shall ***drop the proceedings and pass an order***: -
  - If reply to SCN is satisfactory. (The order shall be passed ***within 30 days from the date of reply to SCN***)
  - If the person instead of replying to the SCN served for failure to furnish returns for a continuous period of 6 months (3 months in case of composition scheme supplier), furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee.
- ***Effective date of cancellation*** - The cancellation of registration shall be effective from a date to be determined by the proper officer and mentioned in the cancellation order.
- ***Liability to pay*** – The cancellation of registration will not affect liability of registered person to pay tax and other dues under the Act for any period prior to the date of cancellation. The PO shall direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5).

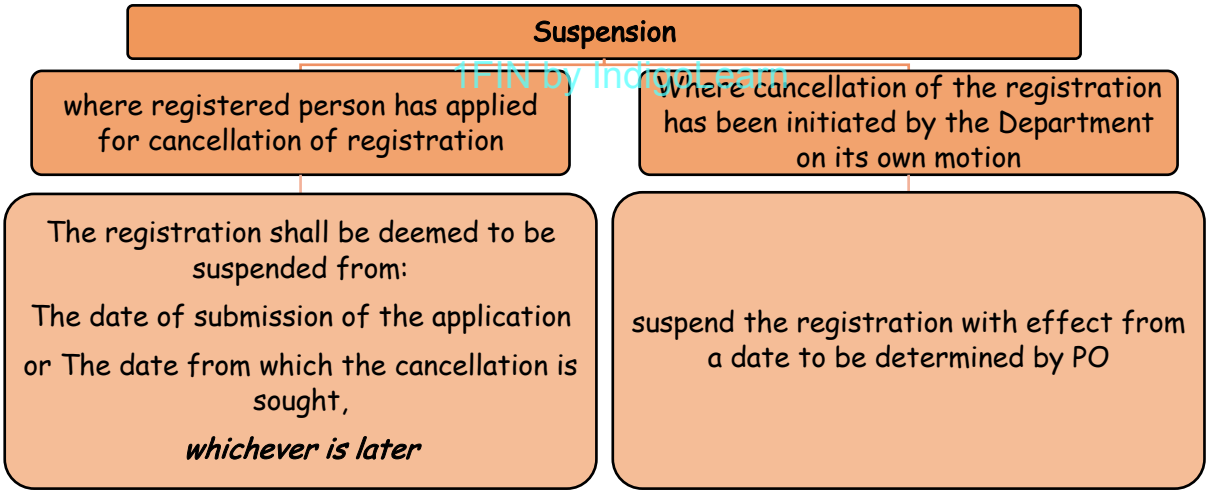
- ***Intimation through Email and SMS*** - Order for cancellation of registration will be issued and intimated to the primary authorized signatory by email and SMS.

11.4 - Other key points on cancellation

- A person to whom a UIN has been granted under rule 17 cannot apply for cancellation of registration
- The cancellation of registration under either SGST Act/UTGST Act shall be deemed to be a cancellation of registration under CGST Act
- Taxpayer would not be allowed to file return for the period after date of cancellation mentioned in the cancellation order. However, he can submit returns of the earlier period (i.e., for the period before date of cancellation mentioned in the cancellation order for which registration was active).

11.5 - Suspension of registration

- Once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, the proper officer may suspend his registration ***during pendency of the proceedings relating to cancellation of registration.***
- Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration.



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- A registered person, whose registration has been suspended as above:
  - shall not make any taxable supply during the period of suspension (i.e., he cannot issue taxable invoice and collect tax) and
  - shall not be required to furnish any return under section 39.
- The suspension of registration shall be deemed to be revoked upon completion of the cancellation proceedings by the proper officer.
- Such revocation shall be effective from the date on which the suspension had come into effect.
- In case the cancellation proceedings have been dropped, suppliers have to issue revised invoice for the suspension period.

- Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he can now suspend the registration of such person, pending the cancellation proceedings, without affording the said person a reasonable opportunity of being heard.
- Mismatch between GSTR 1 and GSTR 3B may also attract suspension.
- In a case where the cancellation is initiated by the Department on its own and registration of a person has been suspended, such person shall not be granted any refund during the period of suspension
- The suspension of registration may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.
- The suspension of registration shall be deemed to be revoked upon furnishing of pending GST returns, where GST registration was suspended due to non-filing of GST return for a financial year beyond 3 months from the due date of furnishing the said return by a composition taxpayer or returns for such continuous tax period as may be prescribed by registered persons other than composition taxpayers, subject to the condition that the registration has not been cancelled by the proper officer under rule 22.

12. REVOCATION OF CANCELLATION OF REGISTRATION – SECTION 30

12.1 - Procedure for revocation of cancellation - Where the registration of a person is cancelled suo-moto by the proper officer for violation of any rule.

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- ***Application within 90 days*** - such registered person may apply for revocation of the cancellation to such proper officer, ***within 90 days*** from the date of service of the ***order of cancellation*** of registration. Said period of 90 days may be extended by Commissioner of an officer authorized by him not below the rank of additional or joint commissioner for a further period not exceeding 180 days.
- ***Order of revocation*** - If the proper officer is satisfied that there are sufficient grounds for revocation of cancellation, he may revoke the cancellation of registration, by an order ***within 30 days of receipt of application*** and communicate the same to applicant.
- ***Show cause notice*** - If the proper officer is not satisfied he has to first issue SCN to the applicant who shall furnish the ***clarification within 7 working days*** of service of SCN.
- ***Disposal of application*** - The proper officer shall dispose the application (accept/reject the same) within ***30 days of receipt of clarification***.

12.2 - Procedure for revocation of cancellation - Where the registration of a person is cancelled for failure of registered person to furnish returns.

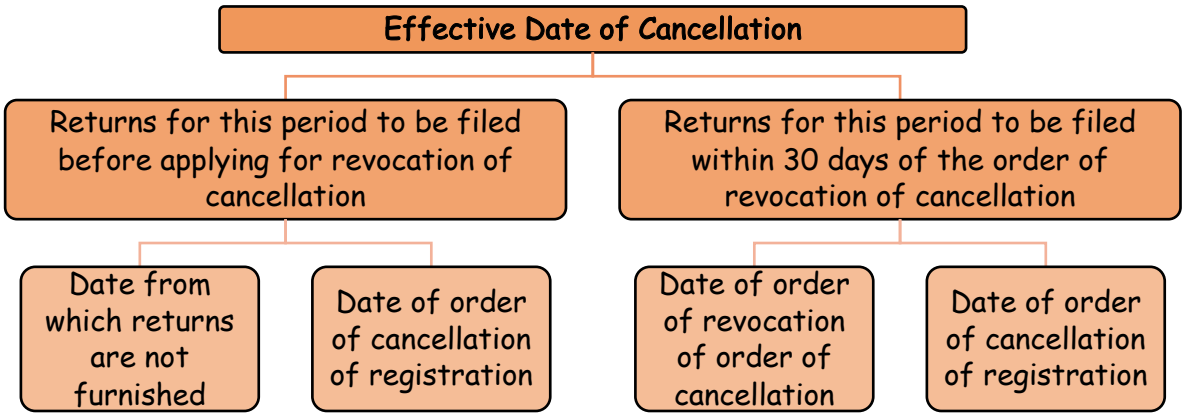
- ***File returns before applying for revocation*** - Where registration was cancelled for failure of registered person to furnish returns, before applying for revocation, the person has to make good the defaults, i.e. the person needs to file such returns and also make payment of all dues.

- ***Time limit for filing returns***

1. ***Where cancellation is effective from the date of order of cancellation:***

   a. In such a case, person applying for revocation of cancellation has to furnish all returns due till the date of such cancellation before the application for revocation can be filed and has to pay any amount due as tax, in terms of such returns along with any amount payable towards interest, penalties or late fee payable in respect of the said returns.

   b. All returns due for the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.



2. ***Where cancellation is effective from retrospective date:***

- In that case, the application for revocation of cancellation of registration is allowed to be filed, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

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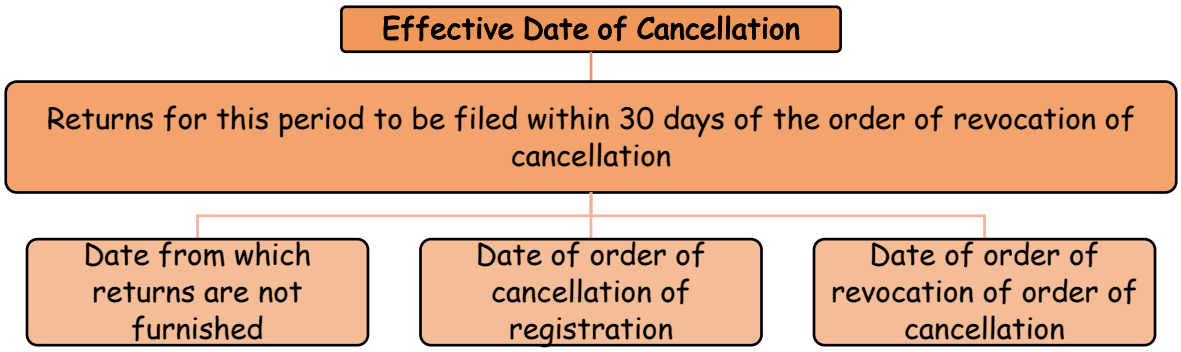
- The time period of filing of application for revocation of ***90 days from the date of service of the order of cancellation of registration***, may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended, by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days.

- [***Effective from 01.10.2023] [Notification No. 38/2023 CT dated 04.08.2023]***



12.3 - Key points on revocation

- The following cannot apply for revocation of cancelled registration
  - UIN Holders (i.e. UN Bodies, Embassies and Other Notified Persons),
  - GST Practitioner
  - The taxpayer or his legal heir who had applied of cancellation of registration
- The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act.

ILLUSTRATIONS

Illustration 1 (Examples - Threshold limit)

Determine whether registration is required in each of the following cases:

i. Mr. Prithvi Raj from Assam exclusively engaged in supply of shoes. Turnover is Rs.22 lakhs. Is registration required u/s 22(1)?

ii. Prithvi Raj from Assam exclusively engaged in supply of Pan Masala. Turnover is Rs.22 lakhs. Is registration required u/s 22(1)?

iii. Prithvi Raj of Assam exclusively engaged in supply of services. Aggregate turnover is Rs.22 lakhs. Is registration required u/s 22(1)?

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iv. Prithvi Raj of Assam is engaged in supply of both taxable goods and services. What is the threshold limit for registration?

v. Shivaji of Telangana, exclusively engaged in supply of toys. Aggregate turnover is Rs.22 lakhs. Is registration required?

vi. Shivaji of Telangana exclusively engaged in the supply of ice-cream. Aggregate Turnover is Rs.22 lakhs. Is registration required u/s 22(1).

vii. Shivaji of Telangana exclusively engaged in the supply of services or in both, services and goods. Aggregate turnover is Rs.22 lakhs. Is registration of required?

viii. Ashoka of Manipur exclusively engaged in supply of paper. Turnover is Rs.12 lakhs. Is registration required u/s 22(1)?

Illustration 2 (Examples & Question I)

Determine Effective date of registration in the following two cases:

i. The aggregate turnover of Dhampur Industries of Delhi exceeds Rs. 20 Lakhs on 1st September. It submits the application for registration on 20th September. Registration certificate is granted on 25th September

ii. Mehta Teleservices is an internet service provider in Lucknow. Its aggregate turnover exceeds Rs. 20 Lakhs on 25th October. It submits the application for registration on 27th November. Registration certificate is granted on 5th December

Illustration 3 (Examples & Questions – I)

In order to be eligible for grant of registration, a person must have a Permanent Account Number issued under the Income- tax Act, 1961. State one exception to it.

Illustration 4 (Examples & Questions – I)

State which of the following suppliers are liable to be registered:

i. Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed Rs. 20 lakhs during the financial year.

ii. An agriculturist who is only engaged in supply of produce out of cultivation of land.

Illustration 5 (Examples & Questions – I)

If a person is operating in different States, with the same PAN number, can he operate with a single registration?

Illustration 6 (Examples & Questions – I)

Can a person having multiple business verticals in a State obtain separate registrations for each business vertical?

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Illustration 7 (Examples & Questions – I)

Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

Illustration 8 (Questions II)

Can the Department, through the proper officer, Suo-moto proceed to register a person?

Illustration 9 (Questions II)

Is it necessary for the UN bodies to get registration under GST?

Illustration 10 (Questions II)

What is the responsibility of the taxable person making supplies to UN bodies?

Illustration 11 (Questions II)

What is the validity period of the registration certificate issued to a casual taxable person and non-resident taxable person?

Illustration 12 (Questions II)

What could be the liabilities (in so far as registration is concerned) on transfer of a business?

Illustration 13 (Questions II)

At the time of registration, will the assessee have to declare all his places of business?

Illustration 14 (Questions II)

What will be the time limit for the decision on the online registration application?

Illustration 15 (Past Exams / RTPs – I)

Luv & Kush pvt. Ltd. of Srinagar, Jammu & Kashmir engaged in the supply of gifts items provides you the following details-

S. No.	Particulars	Date
1	Commencement of the business of supplying goods	01.08.20XX
2	Turnover exceeds Rs.10,00,000 on	15.08.20XX
3	Turnover exceeds Rs.20,00,000	05.09.20XX
4	Application for registration made on	28.09.20XX
5	Registration certificate granted on	06.10.20XX

The company seeks your advice as to how it should raise revised tax invoices for supplies made. Is there any specific provision for issuance of revised tax invoices to unregistered customers? Explain.

Illustration 16 (Past Exams / RTPs – II)

The aggregate turnover of Priyank Services Ltd. exceeded Rs.20 lakh on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September.

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You are required to advice Priyank Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.

Illustration 17 (Past Exams / RTPs – II)

Determine the effective date of registration in the following instances:

(i) The aggregate turnover of Madhu Ltd, engaged in taxable supply of services in the state of Punjab, exceeded Rs.20 lakhs on 25th August 2017. It applies for registration on 19th September 2017 and is granted registration certificate on 29th September 2017.

(ii) What will be your answer, if in the above scenario, Madhu Ltd. Submits the application for registration on 27th September 2017 and is granted registration on 5th October 2017?

Illustration 18 (Past Exams / RTPs – II)

State the persons who are not liable for registration as per provisions of Section 23 of CGST Act, 2017.

Illustration 19 (Past Exams / RTPs – I)

Mr. Allan, a non-resident person, wishes to provide taxable supply of goods. He has no fixed place of business or residence in India. He seeks your advice on the following aspects, relating to CGST Act, 2017:

(i) When shall he apply for registration?
(ii) Is PAN mandatory for registration?
(iii) What is the period of validity of RC granted to him?
(iv) Will he be able to extend the validity of his registration? If yes, what will be the period of extension?

Illustration 20 (Past Exams / RTPs – III)

State with brief reason, whether following suppliers of taxable goods are required to register under the GST law:

(i) Mr. Raghav is engaged in wholesale cum retail trading of medicines in the state of Assam. His aggregate turnover during the financial year is Rs.9,00,000 which consists of Rs.8,00,000 as Intra-state supply and Rs.1,00,000 as Inter-state supply.

(ii) Mr. S. N. Gupta of Rajasthan is engaged in trading of taxable goods on his own account and also acting as an agent of Mr. Rishi of Delhi. His turnover in the financial year 2017-18 is off Rs.12,00,000 on his own account and Rs.9,00,000 on behalf of principal. Both turnovers are Intra-state supply.

Illustration 21 (Past Exams / RTPs – III)

Answer the following questions with respect to casual taxable person under the CGST Act, 2017:

(i) Who is a casual taxable person?
(ii) Can a casual taxable person opt for the composition scheme?
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(iii) When is the casual taxable person liable to get registered?
(iv) What is the validity period of the registration certificate issued to a casual taxable person?
(v) Can the validity of registration certificate issued to a casual taxable person be extended? If yes, what will be the period of extension?

Illustration 22 (Past Exam questions)

Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?

Illustration 23 (Past Exam questions)

Determine with brief reasons whether the following statement is True or False:

Registration under the CGST Act, can be cancelled by the proper officer, if the voluntarily registered person has not commenced the business within 3 months from the date of Registration.

Illustration 24

Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of ready-made garments at multiple locations, i.e., in Himachal Pradesh, Uttarakhand and Tripura in June. It has furnished the following details relating to supply made at such multiple locations for the month of June:

Particulars	Himachal Pradesh (Rs.)	Uttarakhand (Rs.)	Tripura (Rs.)
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Intra-State supply of non - taxable goods	-	21,00,000	40,000

All the above amounts are excluding GST.

With the help of the above-mentioned information, answer the following questions giving reasons:

1. Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case assuming that it is not required to pay any tax on inward supplies under reverse charge.
2. Explain with reasons whether your answer in (1) will change in the following independent cases:
    a. If Mahadev Enterprises is dealing exclusively in taxable supply of goods only from Himachal Pradesh;
    b. If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh;
    c. If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh and has also affected inter-State supplies of taxable goods (other than notified handicraft goods) amounting to Rs. 4,00,000.

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Illustration 25

With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the financial year, determine the aggregate turnover for the purpose of registration under the CGST Act. Also determine whether M/s Jayant Enterprises is liable to be registered under GST law.

S. No.	Particulars	Amount (Rs.)
1	Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan Government.	1,00,000
2	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal by declaring the place of M/s Jayant Enterprises as its additional place of business.	3,00,000
3	Export of goods to England (U.K.)	5,00,000
4	Supply to Rajasthan its own additional place of business in Rajasthan	5,00,000
5	Outward supply of services on which GST is to be paid by recipient under reverse charge	1,00,000

All the above amounts are excluding GST.

You are required to provide reasons for treatment of various items given above.

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10. ASSESSMENT & AUDIT

Contents

- Complete understanding of different kinds of assessments under GST
- Knowledge of audit by tax authorities
- Knowledge Special Audit

1. SELF ASSESSMENT – SECTION 59

- GST is based on trust and the primary obligation of payment of tax lies on assessee himself. Every ***registered person*** shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

2.PROVISIONAL ASSESSMENT - SECTION 60

2.1 – Need of Provisional Assessment

- The assessee can opt for provisional assessment when he/she ***is unable*** to –
  - ***determine the value*** of goods or services or both; or
  - determine the ***rate of tax*** applicable
- Thus, provisional assessment is used in situations which makes it difficult for the assessee to determine the taxable value or the rate of tax.

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2.2 – Aggregate Turnover

- The process to be followed for provisional assessment is stated below –
  - ***File an application*** (in FORM GST ASMT-01) on the common portal, either directly or through a Facilitation Centre. The application is ***filed along with the documents*** in support of his request for payment of tax on a provisional basis.
  - The proper officer may ***issue a notice*** (in FORM GST ASMT-02) requiring the registered person to ***furnish additional information or documents*** in support of his request.
  - The applicant shall file a ***reply to the notice*** (in FORM GST ASMT – 03) and may appear in person before the proper officer.
  - The proper officer shall ***pass an order*** (in FORM GST ASMT-04), within a ***period not later than ninety days*** from the date of receipt of such request allowing –

a. payment of tax on provisional basis at such rate or on such value as may be specified by him and

b. the amount for which the bond is to be executed and security to be furnished.

2.3 – Need of bond and security

- The assessee making the payment on provisional basis needs to –
  - ***execute a bond*** (in FORM GST ASMT-05) for the amount specified by the proper officer, and
  - provide the ***security*** in the form of a bank guarantee, for a value not exceeding 25% of the amount covered under the bond.
- The purpose of the bond is to bind the assessee for payment of the ***difference*** between the ***amount of tax*** as may be ***finally assessed*** and the amount of tax ***provisionally assessed***.

Note –

- The '***amount of bond*** shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

2.4 – Final Assessment Order

- The proper officer shall issue a notice (in FORM GST ASMT-06), calling for information and records required for finalization of assessment.
- The final order shall be issued within a period ***not exceeding 6 months*** from the ***date of the communication*** of the ***order of provisional assessment***.
- The period of 6 months may be ***extended***, on sufficient cause being shown and for ***reasons to be recorded in writing***, by –

  a. the Joint Commissioner or Additional Commissioner for a f***urther period not exceeding 6 months***, and

  b. the Commissioner for such ***further period not exceeding 4 years***.
- Thus, the maximum period available for passing the final assessment order is 5 years (6 months + 6 months + 4 years).
- The proper officer shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any (in FORM GST ASMT-07).

2.5 – Release of Scrutiny

- The applicant may file an application (in FORM GST ASMT-08) for the release of the security after issue of the final assessment order.
- The proper officer shall release the security, after ***ensuring that the applicant has paid the amount*** specified in the final order and issue an order (in FORM GST ASMT-09) ***within a period of 7 working days*** from the date of the receipt of the application.

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2.6 – Payment of Interest

Case 1 – When the tax liability as per the final assessment is higher than the provisional assessment

- When the tax becomes due in final assessment, the registered person in addition to the differential tax shall be liable to ***pay interest on the tax due but not paid***, at the rate specified under section 50(1) i.e. **18%**.
- The time period for such payment shall be calculated from the date the ***tax was due to be paid originally till the date of actual payment.***
- The payment of interest shall be done irrespective of the fact that whether such amount is paid before or after the issuance of order for final assessment.

Example –

Mr. Amith is unable to determine the amount of tax for the month of May, 20X5. With the help of the details given below, compute the interest payable by Mr. X.

Provisional payment of tax on 20th June, 20X5	Rs. 50,000/-
Final assessment order date	18th December
Tax as per final assessment	Rs. 70,000/-
Payment of the different of Rs. 20,000/-	20th December, 20X5

Solution –

In the above case, the tax shall be paid on Rs. 20,000/- from 20th June (the actual date of liability) to 20th December.

Amount of interest = 20,000 x 18% x 183/365 = Rs. 1805/-

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Case 2 – When the tax liability as per the final assessment is lower than the provisional assessment

- When the tax becomes refundable consequent to the order of final assessment, the interest becomes payable if the **amount is not paid within a period of 60 days of the issue of final assessment order**.
- The rate of interest shall be the rate specified under section 56 i.e **6%** from 61st day of the order.

Example –

Mr. Amith is unable to determine the amount of tax for the month of May, 20X5. With the help of the details given below, compute the interest payable, if any.

Provisional payment of tax on 20th June, 20X5	Rs. 50,000/-
Final assessment order date	18th December
Tax as per final assessment	Rs. 20,000/-
Refund of the difference of Rs. 30,000/-	2nd February, 20X6

Solution –

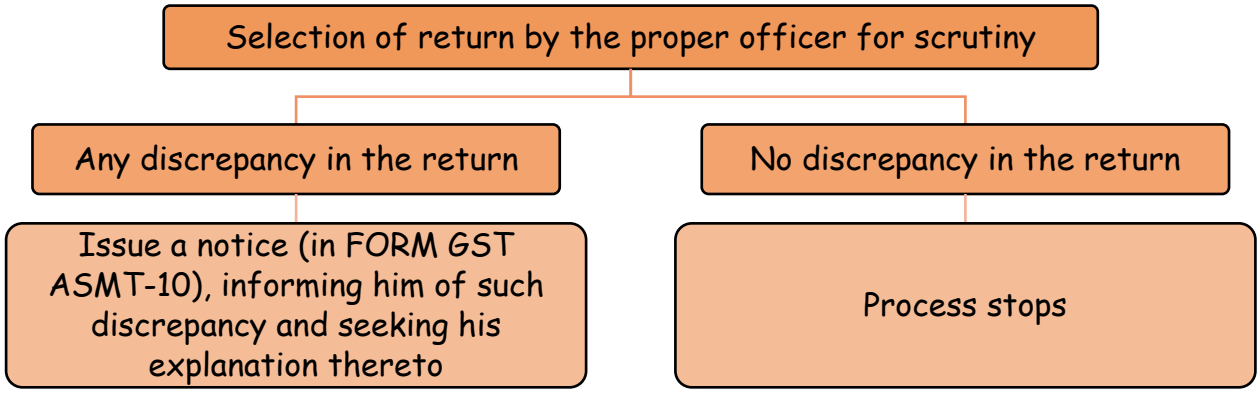
In this case, the tax payment done by Mr. X is more than the liability as per the final assessment, thus leading to refund of Rs. 30,000/-

The date of final assessment order was 18th December and the payment has been done within 60 days of the final order, hence the government is not liable to pay any interest on the refundable amount.

3. SCRUTINY OF RETURNS – SECTION 61

3.1 - Selection for scrutiny

- The proper officer may select any return filed by the taxable person for the purpose of scrutiny.
- The aim of scrutiny is to check the correctness of the return in respect of the tax paid, ITC claimed and the correct applicability of the law.



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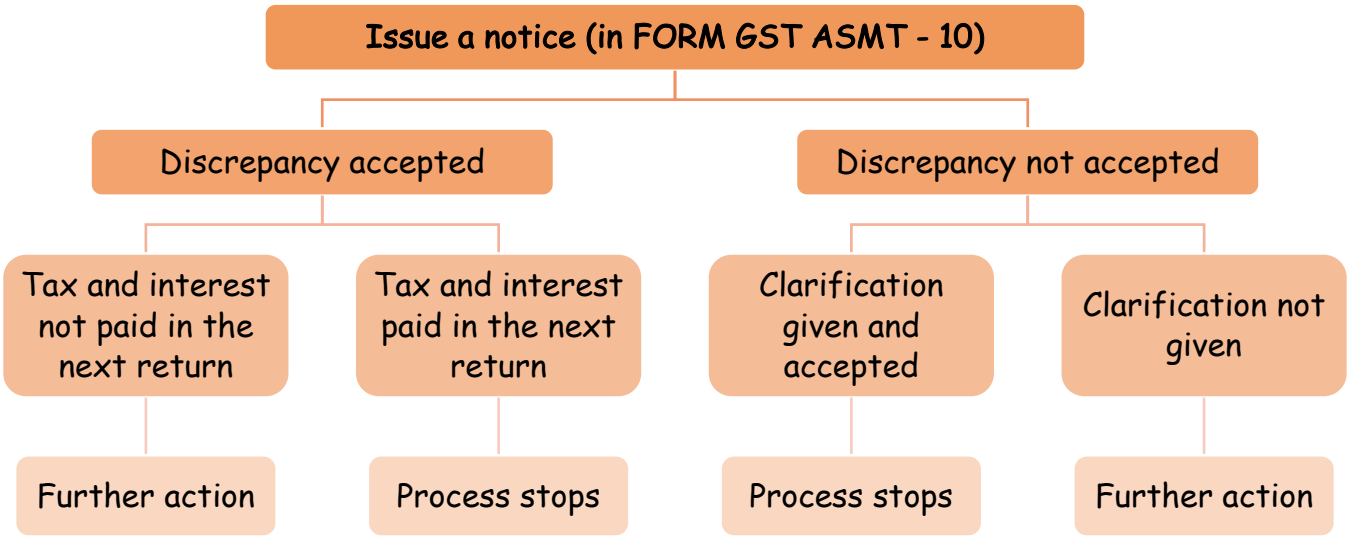
3.2 – Further procedure to be followed



3.3 – Further course of Action

- In the above-mentioned cases, the proper officer can take any of the below mentioned actions –
    - proceed to conduct ***audit*** under ***section 65***; or

- direct the conduct of a ***special audit*** under ***section 66***; or
- undertake procedures of ***inspection, search and seizure*** under ***section 67***; or
- ***initiate proceeding*** for determination of tax and other dues under ***Section 73 or 74***.

4. ASSESSMENT OF NON-FILERS OF RETURNS - SECTION 62

4.1 - Applicability of the Section

- Section 62 is attracted in the below situation –
  - Where a registered person ***fails to furnish the return*** under ***section 39 (monthly/ quarterly)*** or ***section 45 (final return)***, and
  - a ***notice under section 46*** has been issued by proper officer (which requires the taxable person to furnish the return within a period of 15 days); and
  - taxable person ***fails to file return*** within the given time.

4.2 - Action by the proper officer

- When Section 62 becomes applicable, the proper officer may proceed to ***assess the tax liability*** of the said person to the ***best of his judgement*** by taking into account all the relevant material which is available or which he has gathered.
- The summary of the assessment order shall be uploaded electronically by the proper officer.

4.3 - Time limit for issue of order

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- He can issue an ***assessment order*** within a ***period of five years*** from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

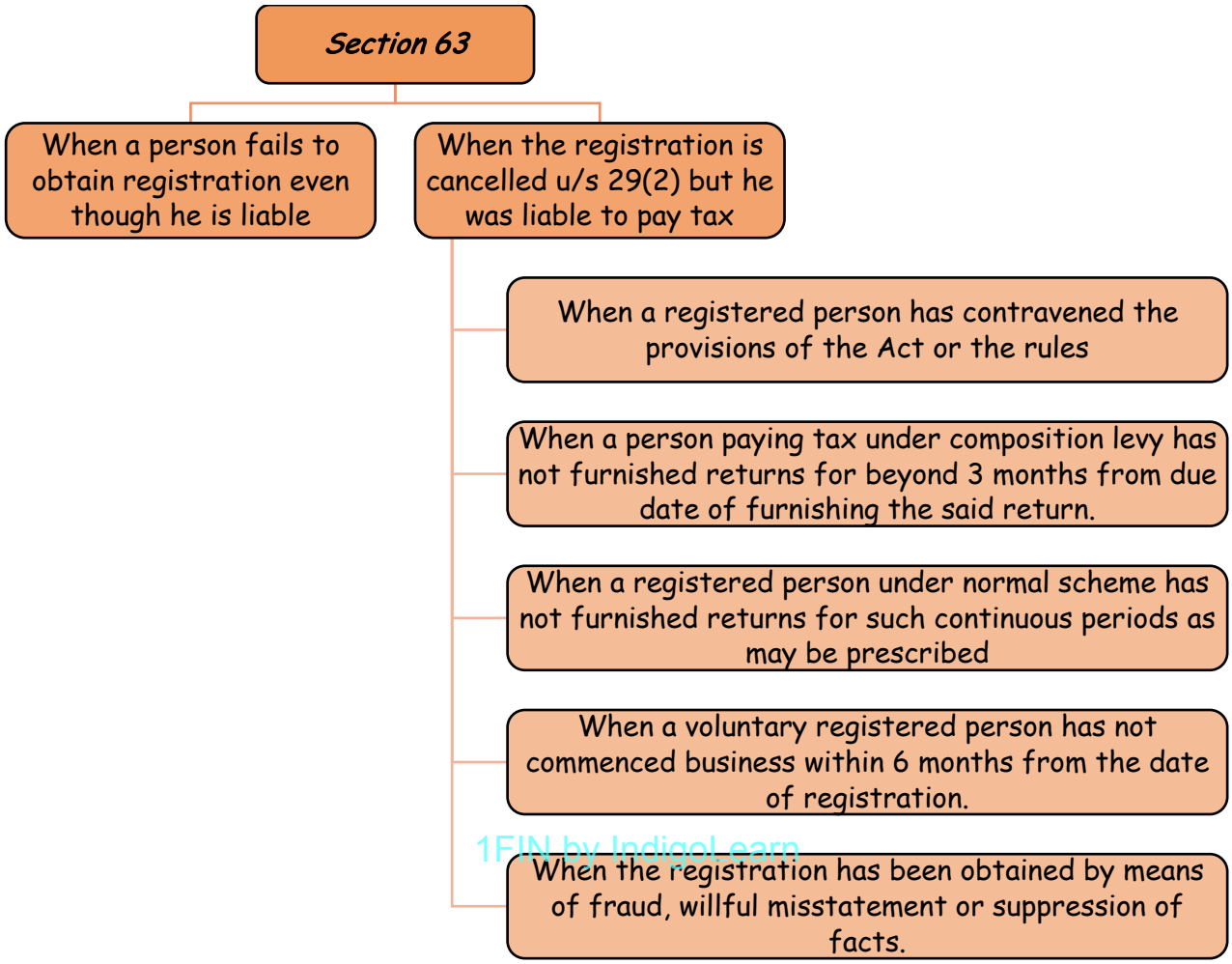
  Example –

  If the taxable person fails to furnish the return for the financial year 2021-22, then the assessment order can be issued within a period of 5 years from 31st December 2022 i.e. until 31st December 2027.

4.4 - Withdrawal of the order

- The above assessment order shall be stand withdrawn if the registered person furnishes a ***valid return within 60 days*** of the service of the assessment order. If failed, he may furnish the same within ***a further period of 60 days on payment of an additional late fee of Rs.100*** for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) or to pay late fee under section 47 shall continue.
- However, the liability for payment of interest under section 50(1) or for payment of late fee under section 47 shall continue.

5.1 – Applicability of the Section



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5.2 – Best Judgement Assessment

- The proper officer shall ***issue a notice*** to the taxable person ***containing the grounds*** on which the assessment is proposed to be made on best judgment basis.
- He shall also ***serve a summary thereof electronically*** in the prescribed form.
- The taxable person shall ***furnish his reply*** within a period of ***15 days***.
- An ***order shall be passed*** and summary thereof shall be uploaded electronically in the prescribed form.
- No assessment order shall be passed without giving the person an opportunity of being heard.

5.3 - Time period

- The proper officer can issue an ***assessment order*** within a period of ***five years*** from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

6. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES - SECTION 64

6.1 - Applicability of the Section

- The proper officer can initiate a summary assessment if he has–
  - any ***evidence showing a tax liability*** of a person; and
  - ***sufficient grounds*** to believe that any delay in doing so may adversely ***affect the interest of revenue.***
- However, the proper officer can begin the summary assessment only after getting ***permission of Additional Commissioner or Joint Commissioner.***
- The summary assessment order and a summary thereof shall be uploaded electronically in the prescribed form.

6.2 - Deemed liability in case of goods

- ***When the taxable person liable to pay tax for supply of goods becomes unascertainable –***

the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

Example –

Mr. Rohan has kept his goods in the warehouse of Mr. Vamshi. The department has initiated summary assessment under Section 64 in respect of the goods. In this case, if it is difficult to get hold of Mr. Rohan, the liability for tax payment would apply on Mr. Vamshi.

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6.3 - Withdrawal of assessment order

- The assessment order can be ***withdrawn by Additional Commissioner or Joint Commissioner;***
- if he thinks that such ***order is erroneous***, and
- follow the procedure laid down in section 73 or section 74

Such withdrawal can be done either –

- ***suo moto*** by the Additional Commissioner or Joint Commissioner; or
- by an ***application*** made by the taxable person ***within 30 days*** from the date of receipt of the order.

7.AUDIT BY TAX AUTHORITIES - SECTION 65

7.1 - Officer eligible to conduct the audit

- Audit under Section 65 can be undertaken by –
  - the ***Commissioner***, or
  - any other ***officer authorised*** by him

7.2 - General provisions of audit

- The audit can be conducted by way of a ***general order*** or a ***specific order***.
- Audit can be conducted for ***few months, one financial year*** or ***more than one*** financial year.

- The audit can be conducted by the officer in their ***own office*** or at the ***place of business of the registered person.***
- The ***registered person shall be informed*** about audit by way of a ***notice not less than 15 working days*** prior to the conduct of audit.

7.3 - Time period of audit

- The audit under shall be completed within a ***period of 3 months*** from the date of ***commencement of the audit***.
- The time period may be ***extended by the Commissioner*** for a further period ***not exceeding 6 months*** if he is satisfied that the audit cannot be completed within a period of 3 months.

Note –
'Commencement of audit' shall mean the date –

- on which the ***records and other documents***, called for by the tax authorities, are ***made available*** by the registered person; or
- the ***actual institution of audit*** at the place of business

whichever is ***later***.

7.4 - Conduct of audit

During the course of audit, the authorised officer may require the registered person —

- to ***afford him the necessary facility*** to verify the books of account or other documents as he may require; or
- to ***furnish such information as he may require*** and render assistance for timely completion of the audit

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The proper officer shall verify the –

- ***documents*** on the basis of which the books of account are maintained and the returns and statements furnished,
- correctness of the ***turnover***,
- ***exemptions and deductions*** claimed,
- ***rate of tax*** applied in respect of the supply of goods or services or both,
- ***input tax credit*** availed and utilised,
- ***refund*** claimed, and
- ***other relevant issues*** and record the observations in his audit notes.

7.5 - Conclusion of audit

- The proper officer ***shall inform*** the registered person about the ***findings, his rights and obligations*** and the reasons for such findings ***within 30 days***.
- The officer shall ***finalise the findings*** of the audit ***after due consideration*** of the reply furnished.
- If the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate ***action under section 73 or section 74***.

8.1 - Officer eligible to direct a special audit

The special audit can be directed by –

- any officer ***not below the rank of Assistant Commissioner***, but
- with the ***prior approval of the Commissioner***.

8.2 - Need for a special audit

The special audit can be done when –

- the case if ***complex***;
- special audit will be in the ***interest of the revenue***;
- the officer is of the opinion that the ***value*** has ***not been correctly declared*** or the ***credit availed*** is ***not within the normal limits***.

In the above cases, the officer can direct such registered person by a ***communication in writing*** to get his records including books of accounts examined and audited.

8.3 - Who will conduct special audit?

- The special audit will be conducted by –
    - ***a chartered accountant*** or ***a cost accountant***, and
    - he shall be ***nominated by the Commissioner***.

Note –

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The special audit can be conducted irrespective of the fact that the books of accounts of already audited under any other Act or not.

8.4 - Time period

- The report shall be submitted to the Assistant Commissioner within a ***period of 90 days***.
- Such period may be extended ***by the Assistant Commissioner*** for a ***further period of 90 days*** on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason.

8.5 - Audit expense

- The expenses of the examination and audit of records including the remuneration of such chartered accountant or cost accountant, shall be ***determined and paid by the Commissioner*** and such determination shall be final.

8.6 - Conclusion of audit

- The registered person shall be ***given an opportunity of being heard*** in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings against him.

- If the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate ***action under section 73 or section 74.***

ILLUSTRATIONS

Illustration 1

Kulbhushan & Sons has entered into a contract to supply a consignment of certain taxable goods.

However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12th January, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies the goods on 25th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21st March, a tax of Rs. 1,80,000 becomes due on the consignment.

Kulbhushan & Sons pays the tax due on 9th April.

Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

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Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21st March, a tax of Rs. 4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9th April and tax was refunded to it on 05th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

Illustration (Questions – I)

Is summary assessment order to be necessarily passed against the registered person?

Illustration (Questions – I)

Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?

Illustration (Questions – I)

What recourse may be taken by the officer in case, proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under Section 61 of CGST Act?

Illustration (Questions – II)

- Miss. Reena Benerji is engaged in retail business of selling mobile phones in the state of West Bengal.
- She has affected to the supplies to the customers in the states of UP and Haryana.

- Her total turnover during the financial year 31st March is only Rs. 18 Lacs.
- Owing to low profit margin in the business, she decided to shut down the business in April.
- Proper officer has collected evidences of the inter-state sale of mobile phones effected by Miss. Reena Benerji during the financial year ending 31st March.
- Now, the Proper officer wants to make assessment as 'she was liable for registration but did not get herself registered'

You are required to the PO by determining which assessment can be done in this case.

- Self-assessment
- Provisional assessment
- Assessment of unregistered persons
- Special assessment

Illustration (Questions – II)

In what cases, assessment order passed by the proper officer may be withdrawn?

Illustration (Questions – II)

The time limit for issuance of order of Best judgement assessment under CGST Act is?

Illustration 2

- Divya Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28th April, 2018.
- The tax payment on provisional basis was made in respect of all the three consignments on 20th May, 2018.
- Consequent to the final assessment order passed by the Assistant Commissioner on 21st June, 2018, a tax of Rs. 1,20,000 and Rs. 1,50,000 became refundable on 1st and 3rd consignments,
- whereas a tax of Rs. 1,20,000 became due on 2nd consignment.
- Divya Trader applies for the refund of the tax on 1st and 3rd consignments on 12th July, 2018 and pays the tax due on 2nd consignment on the same day.
- Tax was actually refunded to it of 1st consignment on 8th September, 2018,
- whereas of 3rd consignment on 18th September, 2018.
- Customers of Divya Trader who purchased the consignments have not taken Input Tax Credit (ITC).

Determine the interest payable and receivable, if any, under CGST Act, 2017 by Divya Trader.

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11. TAX INVOICE, CREDIT NOTE & DEBIT NOTE

Contents

- Time limit for issuance of invoice [Sec 31(1),(2), (4), (5), (6) &(7)]
- Special aspects of tax invoice [Sec 31(3)]
- Bill of Supply [Sec 31(3)(c)]
- Contents of documents
- Delivery challan (Rule 55)
- Credit and Debit notes [Sec 34]
- E-invoicing [Rule 48(4)]

1. INTRODUCTION

- An invoice is a commercial instrument issued by a supplier of goods/services to a recipient.
- Invoicing is very crucial aspect for ensuring tax compliance under any indirect taxation system.
- In order to ensure transparency, issuance of invoice for every taxable transaction is a pre-requisite.
- An invoice serves as a demand for payment and becomes a document of title when paid in full.

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Invoice or tax invoice [Sec 2(66)] *– means the tax invoice referred to in section 31. This section mandates the issuance of an invoice or a bill of supply for every supply of goods or services.*

- Under GST, a tax invoice is not only evidence of supply of goods or services but is also an essential document for the recipient to avail Input Tax Credit (ITC).
- A registered person cannot avail input tax credit unless he is in possession of a tax invoice or a debit note.
- There is no format prescribed for the Tax Invoice. Only certain fields have been prescribed as mandatory fields.
- ***A tax invoice shall be issued by a registered person supplying taxable goods or taxable services or both.***

2.TIME LIMIT FOR ISSUANCE OF INVOICE - SECTION 31(1) & (2)

- The time for issuing an invoice would depend on the nature of supply viz. whether it is a supply of goods or supply of services.
- Section - 31(1) - A registered person supplying ***taxable goods*** shall issue a tax invoice:
  - ***where supply involves movement of goods***

        - before or at the time of removal of goods
    - ***where supply does not involve movement of goods***
        - before or at the time of delivery or making available thereof to the recipient.

- The Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed. (e.g., Movie ticket issued by theatre).

- Government may notify the categories of services in respect of which any other document issued in relation to supply shall be deemed to be a tax invoice or tax invoice may not be issued.

- <u>Section - 31(2)</u> - A registered person supplying ***taxable Services*** shall issue a tax invoice:

- ***Generally***

    - Before or after the provision of service, but within a period of 30 days from the date of supply of service.

- ***where the supplier is an insurer or banking company or financial institution, including a non-banking financial company (NBFC)***

    - Before or after the provision of service, but within a period of 45 days from the date of supply of service.

- ***where the supplier is an insurer or banking company or financial institution, including a non-banking financial company (NBFC) or a telecom operator, or any other class of supplier of services as may be notified by the Government, making taxable supplies of services between distinct persons as specified in section 25***

    - Before or at the time such supplier records the same in his books of accounts or before the expiry of quarter during which the supply was made.

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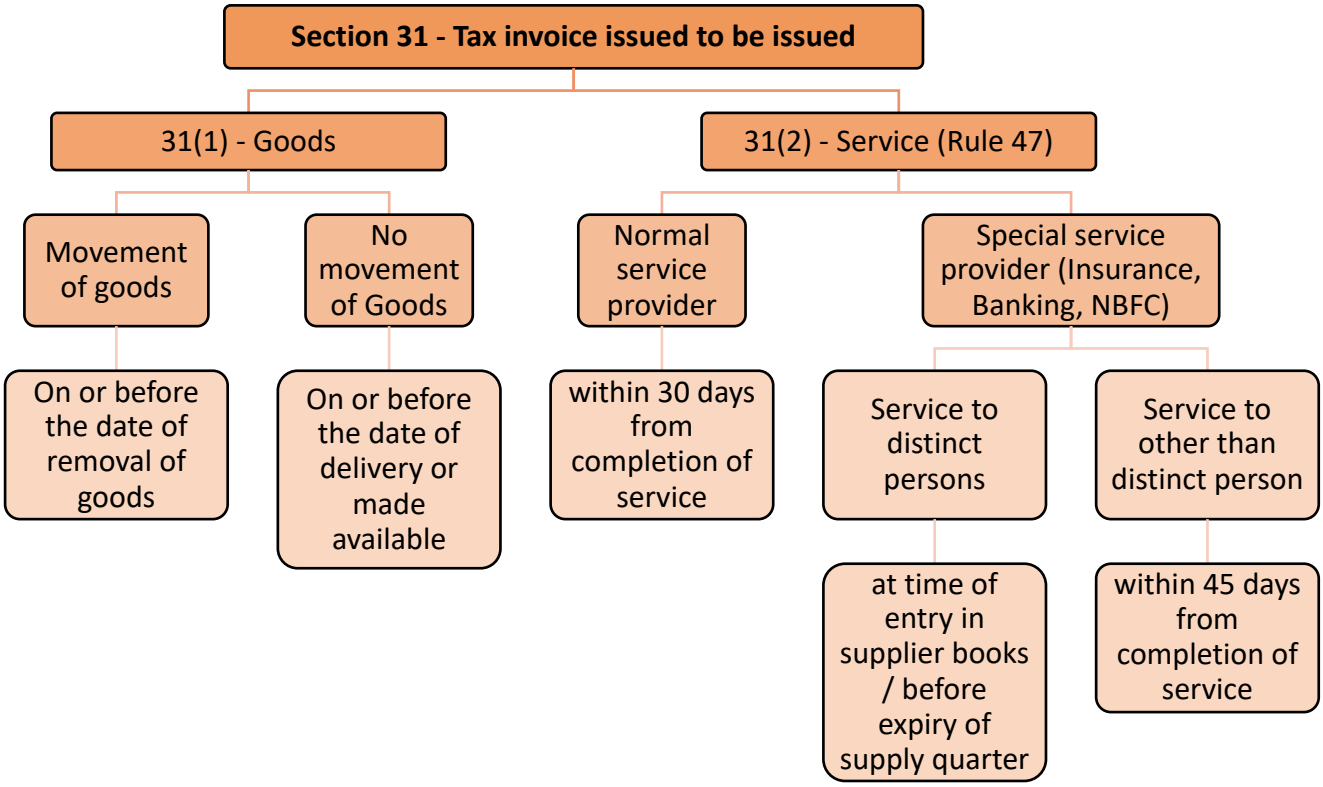

3. SECTION 31(3)

3.1 – Revised Tax Invoice – Section 31(3)(a) read with Rule 53

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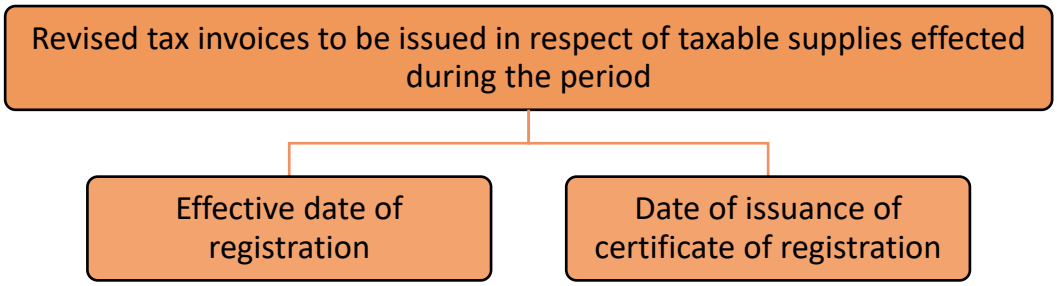
- ***Section 25*** - A person who becomes liable for registration has to apply for registration within 30 days of becoming liable for registration. When such an application is made within the stipulated time period and registration is granted, the effective date of registration is the date on which the person became liable for registration.
- Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices.
- Such invoices shall be issued against the invoices already issued during said period. The revised invoices enable the recipient to avail ITC on such supplies.
- ***Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration.***
- The words "Revised Invoice" shall be indicated prominently on such invoices.
- A registered person may issue a ***Consolidated Revised Tax Invoice*** in respect of all taxable supplies made to an ***unregistered recipient*** during such period.
- However, in case of ***inter-State supplies***, a consolidated Revised Tax Invoice c***annot be issued*** in respect of all unregistered recipients if the value of a ***supply exceeds Rs.2,50,000***.



3.2 - Consolidated Tax Invoice - Section 31(3)(b) read with 4th proviso to rule. 46

- A registered person may not issue a Tax Invoice if:
  - Value of the goods/services/both supplied < Rs.200,
  - The recipient is unregistered; and
  - The recipient does not require such invoice.
- Instead, such registered person shall issue a ***Consolidated Tax Invoice*** for such supplies at the close of each day in respect of all such supplies.
- Above provision is ***also applicable to Bill of Supply***.
- However, this option is ***not available*** to a supplier engaged in making supply of services by way ***of admission to exhibition of cinematograph films*** in multiplex screens.
- REQUIREMENT OF ISSUING CONSOLIDATED INVOICES IN CASE OF RCM U/S 9(4) IS OMITTED.

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3.3 - Bill of Supply - Section 31(3)(c) read with rule 49

- Section 31(3)(c) stipulates that a registered person supplying
  - exempted goods or services or both or
  - a registered person paying tax under composition levy,

  shall issue a ***'bill of supply'*** instead of a tax invoice.
- Person opting for composition levy shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him.
- Since no tax is collected from the recipient by a registered person opting for the composition levy and a registered person supplying exempted goods and/or services, Bill of Supply issued by such persons does not contain the details pertaining to rate of tax and amount of tax. Further, value to be mentioned in the Bill of Supply is not also taxable value.
- Any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as bill of supply for the purposes of the Act.
- ***Invoice-cum-bill of supply [Rule 46A]*** - Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, ***a single "invoice-***

cum-bill of supply" may be issued for all such supplies. Rule 46A is notwithstanding anything contained in rule 46 or rule 49 or rule 54 of CGST Rules.

- Where a registered person is supplying taxable as well as exempted goods or services or both to a registered person, he has to issue separate Tax invoice for taxable supplies and Bill of supply for exempted supplies.

3.4 - Receipt Voucher and Refund Voucher - Section 31(3)(d) and Section 31(3)(e) read with rule 50 and rule 51 respectively

- A registered person shall, on ***receipt of advance payment*** with respect to any supply of goods or services or both, ***issue a Receipt Voucher*** evidencing receipt of such payment.
- Where at the time of receipt of advance, rate of tax and/or nature of supply is not determinable:
  - For rate of tax - tax shall be paid at the rate of ***18%***
  - For nature of supply - same shall be treated as ***inter-State supply*** (i.e., IGST shall be made at 18%)
- **Sec 12** – GST is not payable on advances in case of supply of goods.However, GST is payable on advances in case of supply of services

3.5 - Invoice and Payment Voucher - Section 31(3)(f) & (g) read with second. proviso to rule 46 and rule 52 and Rule 47A

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- The recipient is liable to pay tax on reverse charge basis where he receives
- supply of such goods/services/both which are notified for reverse charge purposes under section 9(3). Such supplies can be received from a registered or an unregistered supplier.
- Further, a builder/promoter is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:
  i. A builder/promoter must purchase 80% of inputs and input services used in supplying the service from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).
  ii. Where cement is received from an unregistered person, promoter/builder has to pay txax on supply of such cement on reverse charge basis and
  iii. GST on capital goods is payable by the promoter on reverse charge basis.
- A registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act]
  - shall ***issue an Invoice*** in respect of goods or services or both
  - ***received by him from the supplier who is not registered***
  - on the ***date of receipt*** of goods or services or both.
- Besides, a registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall

- issue a ***Payment Voucher***
- at the time of making payment to the supplier.

- Thus, a recipient liable to pay tax by virtue of section 9(3) has to issue invoice and payment voucher only when supplies have been received from an unregistered supplier.

- Rule 47A
  - Rule 47A provides that where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section (3) or subsection (4) of section 9, he shall issue the said invoice within a period of 30 days from the date of receipt of the said supply of goods and/or services, as the case may be
  - Thus, invoice to be issued within a period of 30 days from the date of receipt of the said supply of goods and/or services, as the case may be.

4. TIME OF ISSUE OF INVOICE IN CASE OF CONTINUOUS SUPPLY OF GOODS AND SERVICES - SECTION 31(4) & 31(5)

4.1 - In case of continuous supply of goods

- Continuous supply of goods means supply continuously or on recurrent basis, under a contract whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis.

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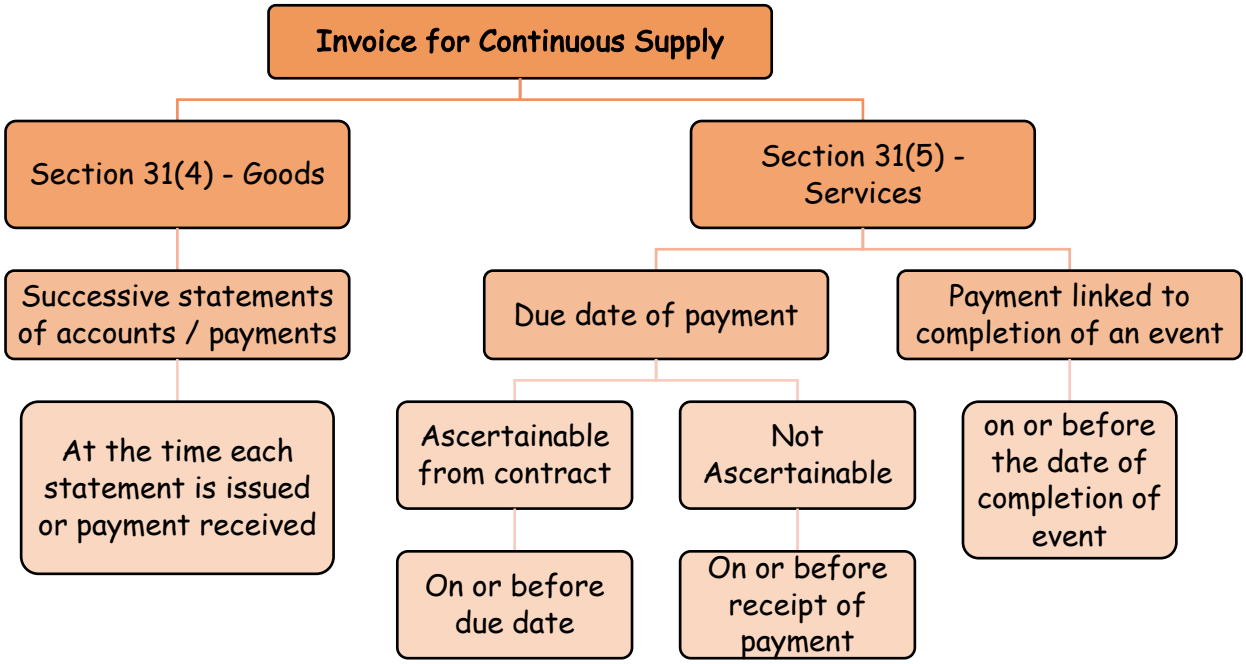
- Where successive statements of accounts / successive payments are involved, the invoice shall be issued
  - Before / at the time each such statement is issued or each such payment is received as the case may be.

4.2 - In case of continuous supply of services

- Continuous supply of services means supply provided continuously or on recurrent basis under a contract for a period exceeding 3 months with periodic payment obligations.

- The invoice shall be issued
  - Where due date of payment is ascertainable from the contract
- on or before the due date of payment
  - where due date of payment is not ascertainable from the contract
- before or at the time when the supplier of service receives the payment
  - where payment is linked to the completion of an event
- on or before the date of completion of that event.



5. TIME OF ISSUE OF INVOICE IN CASE OF CESSATION AND SALE ON APPROVAL BASIS – SECTION 31(6) & 31(7)

5.1 - Where supply of services ceases before its completion - Section 31(6)

- In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the ***time when the supply ceases*** and
- Such invoice shall be issued to the extent of the supply made before such cessation.

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5.2 - Goods sent on sale or return basis - Section 31(7)

- Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:
  - before/at the time of supply Or
  - 6 months from the date of removal
  - whichever is earlier.

6. PARTICULARS OF A TAX INVOICE - SECTION 31(1) & (2) READ WITH RULE 46

- ***Mandatory fields*** - There is no format prescribed for an invoice, but rules make it mandatory for an invoice to have the following fields (only applicable fields are to be filled):
  1. Name, address and GSTIN of the supplier
  2. A consecutive serial number
  3. Date of its issue
  4. Name, address and GSTIN or UIN of recipient (If recipient is registered)
  5. HSN code for goods or services
  6. Description of goods or services
  7. Quantity in case of goods and unit or Unique Quantity Code thereof
  8. Total value of supply of goods or services or both

9. Taxable value of supply of goods or services or both taking into account discount or abatement, if any
10. Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess)
11. Amount of tax charged
12. Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce
13. Address of delivery where the same is different from the place of supply
14. Whether the tax is payable on reverse charge basis
15. Signature or digital signature of the supplier or his authorized representative (not required in case of issuance of an electronic invoice in accordance with the provisions of the Information Technology (IT) Act, 2000).
16. Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case e-invoice has been issued.

- ***Specifications of Invoice number –***

1. Every invoice must contain aconsecutive serial number
2. Such number cannot not exceed 16 characters.
3. It can contain alphabets/ numerals/ special
4. characters hyphen or dash and slash, and any combination thereof.
5. It can be in one or multiple series.

Note - The serial number of invoices issued during a tax period shall be furnished electronically [through the Common Portal – www.gst.gov.in], in Form GSTR-1 [Details of outward supplies of goods of services]

Note - The taxpayers exempted from the mandatory requirement of e-invoicing (discussed subsequently) are required to provide a declaration on the tax invoice stating that though their aggregate turnover exceeds the notified aggregate turnover for e-invoicing, they are not required to prepare an e-invoice.

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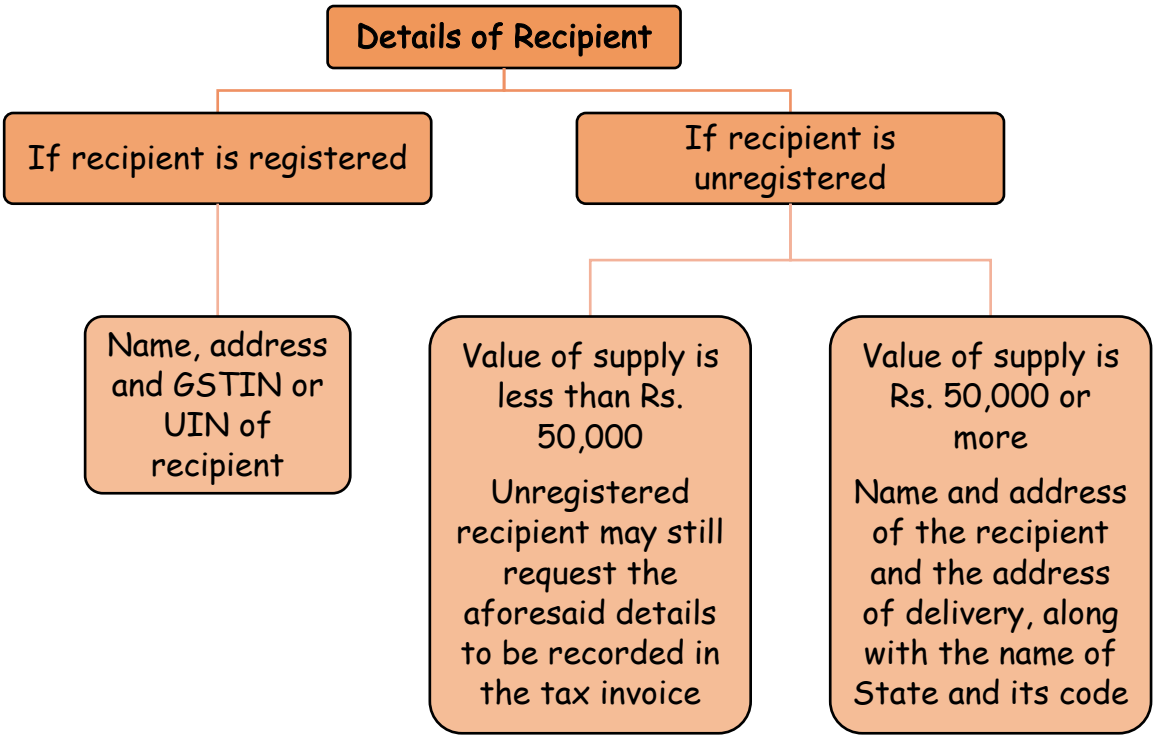
- ***Details of recipient***



- ***Number of HSN digits required on tax invoice*** and class of registered person not required to mention HSN [Rule 46].
    - HSN - Harmonised System of Nomenclature – 8 Digit code given for supply of goods
    - SAC – Service Accounting code - 6 Digit code given for supply of services
- Board may, on the recommendations of the Council, by notification, specify Number of HSN digits required on tax invoice and class of registered person not required to mention HSN. In view of this powers, following has been notified vide Notification No. 12/2017 CT dated 28.06.2017 as amended:

- Position with effect from 1.4.2021

S. No.	Annual Turnover in the Preceding FY	Number of digits in HSN Code
1.	At =< Rs. 5 Crore	For B2B supply – 4 For B2C supply – 4 (Optional)
3.	At > Rs. 5 crores	For B2B & B2C supply - 6

- Manner of issuing the invoice - Rule 48

In case of Taxable Supply of Goods	In case of Taxable Supply of Services
Invoice shall be prepared in ***TRIPLICATE***	Invoice shall be prepared in ***DUPLICATE***
Original copy – For recipient Duplicate copy - For TransporterTriplicate copy – For supplier	***Original copy*** - For recipient Duplicate copy - For supplier

7. PARTICULARS OF OTHER DOCUMENTS

- ***Particulars of Revised Tax Invoice - Section 31(3) read with rule 53 & 46 –*** The law does not specify any format for revised tax invoice but it must contain the following details:

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    1. The word 'revised invoice'.
    2. Name, address and GSTIN of the supplier;
    3. A consecutive serial number not exceeding 16 characters.
    4. Date of issue of document
    5. Name, address and GSTIN or UIN of recipient (If recipient is registered)
    6. Name, address of recipient, address of delivery along with name of state and its code, if recipient is unregistered.
    7. Serial number and date of corresponding tax invoice as the case may be, bill of supply
    8. Value of taxable supply, rate of tax, and amount of tax.
    9. Signature or digital signature of the supplier or his authorized representative
- ***In cases involving supply of online money gaming/service provided by/through ECO or by supplier of OIDAR services to unregistered recipient, tax invoice to contain the name of the State irrespective of value of supply - rule 46 (amended) –*** Rule 46 prescribes the particulars that a tax invoice issued by a registered person should contain. It, inter alia, prescribes that:
    - ***Where recipient is registered***, tax invoice shall contain the name, address and GSTIN/UIN of the recipient
    - ***Where the recipient is unregistered***:

- tax invoice shall contain name and address of the recipient and the address of delivery, along with the name of the State and its code, ***only where the value of taxable supply ≥ Rs. 50,000*** – Clause (e)
- ***In case where the value of taxable supply < Rs. 50,000***, invoice shall contain the name and address of the recipient and the address of delivery, along with the name of the State and its code ***only when the recipient requests that such details be recorded in the tax invoice*** – Clause (f)

- **Said proviso has been amended *with effect from 04.08.2023* to provide that the tax invoice may contain the name of the State of the recipient only and the same shall be deemed to be the address on record of the recipient**. The name and address of the recipient along with its PIN code is not mandatory to be declared on the tax invoice.
- Further, as seen earlier, since online gaming has been made taxable with effect from 01.10.2023, above proviso has been ***made applicable to cases involving supply of online money gaming with effect from 01.10.2023***.
- In ***cases involving supply of online money gaming*** or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the ***name of the State of the recipient and the same shall be deemed to be the address on record of the recipient***.

  [Notification No. 38/2023 CT dated 04.08.2023 and 51/2023 CT dated 29.09.2023]

- ***Particulars of Bill of supply - Section 31(3)(c) read with rule 49*** - The law does not specify any format but it must contain the following details:

  1. Name, address and GSTIN of the supplier;
  2. A consecutive serial number not exceeding 16 characters.
  3. Date of issue of document
  4. Name, address and GSTIN or UIN of recipient (If recipient is registered)
  5. HSN code of goods and services
  6. Description of goods or services
  7. Value of supply
  8. Signature or digital signature of the supplier or his authorized representative

- ***Particulars of Receipt voucher - Sec 31(3)(d) read with rule 50*** – Following are the details a receipt voucher must contain:

  1. Name, address and GSTIN of the supplier;
  2. A consecutive serial number not exceeding 16 characters.
  3. Date of issue of document
  4. Name, address and GSTIN or UIN of recipient (If recipient is registered)
  5. Description of goods or services
  6. Amount of advance taken
  7. Rate of tax
  8. Amount of tax charged in respect of taxable goods or services
  9. Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce

10. Whether the tax is payable on reverse charge basis; and
11. Signature/digital signature of supplier/his authorized representative.

- ***Particulars of Refund voucher - Section 31(3)(e) read with rule 51 –***

1. Name, address and GSTIN of the supplier;
2. A consecutive serial number not exceeding 16 characters.
3. Date of issue of document
4. Name, address and GSTIN or UIN of recipient (If recipient is registered)
5. Description of goods or services
6. Amount of refund made
7. Rate of tax
8. Amount of tax paid in respect of taxable goods or services
9. Whether the tax is payable on reverse charge basis; and
10. Signature/digital signature of supplier/his authorized representative

- ***Particulars of payment voucher - Section 31(3)(f) & (g) read with rule 52 –***

1. Name, address and GSTIN of the supplier;
2. A consecutive serial number not exceeding 16 characters.
3. Date of issue of document
4. Name, address and GSTIN or UIN of recipient
5. Description of goods or services
6. Amount paid
7. Rate of tax
8. Amount of tax payable in respect of taxable goods or services
9. Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
10. Signature/digital signature of supplier/his authorized representative

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- However, the signature or digital signature of the supplier/his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000.

8. SPECIAL CASES WHERE SUPPLIER CAN ISSUE ANY DOCUMENT OTHER THAN TAX INVOICE - SECTION 31(2) READ WITH RULES 52

- Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which--
    - any other document issued in relation to
    - the supply shall be deemed to be a tax invoice; or
    - tax invoice may not be issued.
- Following suppliers may issue a tax invoice, but they are also permitted to issue any other document in lieu of tax invoice, by whatever name called:

S.No.	Supplier	Information in the document in lieu of Invoice

		Optional	Mandatory
1.	Insurer/Banking company/Financial institution, including NBFC	Serial number Address of the recipient	Other information as prescribed for a Tax Invoice, under rule 46. Issue a consolidated tax invoice/ advice or any otherdocument in lieu thereof, by whatever name called may be issued for supply made during a month at the end of the month.
2.	Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road ina goods carriage		• Gross weight of theconsignment • Name of the consignor and the consignee • Registration number of goods carriage in which the goods are transported • Details of goods transported • Details of place of origin anddestination • GSTIN of the person liablefor paying tax whether as consignor, consignee or GTA • Other information as prescribed for a tax invoice, under rule 46
3.	Supplier of passenger transportation service	• Serial number • Address of the recipient	• Tax invoice shall include ticket in any form, by whatever name called. • Other information as prescribed for a tax invoice under Rule 46
4.	Registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens	• Details of recipient of Service	• Supplier is required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice • Other information as prescribed for a tax invoice, under rule 46

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9. DELIVERY CHALLAN - RULE 55

- Rule 55 specifies the cases where at the time of removal of goods, goods may be removed on delivery challan and ***invoice may be issued after delivery***.
    - Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
    - Transportation of goods for job work,
    - Transportation of goods for reasons other than by way of supply, or
    - Such other supplies as may be notified by the board
- Delivery challan to be issued should be serially numbered not exceeding 16 characters.
- ***Particulars of delivery challan:***
    1. Date and number of the delivery challan
    2. Name, address and GSTIN of the consigner, if registered

3. Name, address and GSTIN or UIN of the consignee, if registered
4. HSN code and description of goods,
5. Quantity (provisional, where the exact quantity being supplied is not known)
6. Taxable value
7. Tax rate and tax amount where the transportation is for supply to the consignee
8. Place of supply in case of inter-state movement
9. Signature

- ***Other aspects of delivery challan***
- The delivery challan shall be prepared in ***TRIPLICATE***
    - Original copy – For Consignee
    - Duplicate copy - For Transporter
    - Triplicate copy - For Consignor
- ***Declaration in E-way Bill*** - Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in E-Way Bill.
- ***Where tax invoice could not be issued*** - Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.
- ***Goods transported in SKD/CKD condition or in batches or lots*** - Where the goods are being transported in a semi knocked down (SKD) or completely knocked down (CKD) condition or in batches or lots,

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    - the supplier shall issue the complete invoice before dispatch of the first consignment;
    - the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
    - Copies of the corresponding delivery challan shall accompany each consignment along with a duly certified copy of the invoice; and
    - the original copy of the invoice shall be sent along with the last consignment
- ***Goods sent on approval basis or Movement of art work –***
    - Sometimes there is movement of goods within a state or to other state at the request of buyer but the sale is not finalised.
    - Since the suppliers are not able to ascertain their actual supplies beforehand, they are unable to register as a casual taxable person.
    - In view of relevant provisions of rule 55, it is clarified that the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods.

- For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.
- The above provisions are applicable in case where artists supply art works in different States other than the State in which they are registered. If the art work is selected by the buyer, then the supplier issues a tax invoice only at the time of supply. The movement of artwork happens on a delivery challan along with the e-way bill.

10. SECTION 32 AND 33

- ***Prohibition of unauthorised collection of tax - Section 32***
  - A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.
  - No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.
- ***Amount of tax to be indicated in tax invoice and other documents - Section 33***
  - where any supply is made for a consideration,
  - every person who is liable to pay tax for such supply
  - shall prominently indicate in all documents relating to assessment, tax invoice and other like documents,
  - the amount of tax which shall form part of the price at which such supply is made

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11. DEBIT NOTE AND CREDIT NOTE – SECTION 34

Credit note - Section 2(37)*- means a document issued by a registered person under sub-section (1) of section 34.*
Debit note - Section 2(38)*- means a document issued by a registered person under sub-section (3) of section 34.*

- ***Issuance of Credit Note*** - In order to regularize any of the below mentioned kinds of situations, the supplier is allowed to issue a document called as ***credit note*** to the recipient:
  - The supplier has erroneously declared a value which is more than the actual value of the goods or services provided.
  - The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
  - The quantity received by the recipient is less than what has been declared in the tax invoice.
  - The quality of the goods or services or both supplied is not to the satisfaction of the recipient thereby necessitating a partial or total reimbursement on the invoice value
  - Any other similar reasons
- ***Purpose of issuance***

- The credit note is a convenient and legal method by which the value of the goods or services in the original tax invoice can be amended or revised.
- The issuance of the credit note easily allows the supplier to decrease his tax liability in his returns without requiring him to undertake any tedious process of refunds.

Credit note(s) are not permitted to be issued in case secondary discounts are allowed by the supplier since the tax liability of the supplier does not get reduced in such case. However, supplier can issue financial/ commercial credit note(s) to reduce the value of supply payable by the recipient to the supplier.

- ***Time limit for issuing credit note***
- Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than:
  - 30th November following the end of the financial year in which such supply was made, Or
  - the date of furnishing of the relevant annual return,

  Whichever is earlier.
- The tax liability shall be adjusted in such manner as may be prescribed.
- However, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.
- ***Issuance of Debit Note*** - In order to regularize the below mentioned kinds of situations, the supplier is allowed to issue a document called as debit note to the recipient:
  - The supplier has erroneously declared a value which is less than the actual value of the goods or services or both provided.
  - The supplier has erroneously declared a lower tax rate than what is applicable for the kind of the goods or services or both supplied.
  - The quantity received by the recipient is more than what has been declared in the tax invoice.
  - Any other similar reasons.
- ***Purpose of issuance***
  - The debit note/supplementary invoice is a convenient and legal method by which the value of the goods and/or services in the original tax invoice can be enhanced.
  - The issuance of a debit note/supplementary invoice creates additional tax liability.
  - The treatment of a debit note/supplementary invoice is identical to the treatment of a tax invoice as far as returns and payment are concerned.
- ***Time limit for issuing Debit Note***
  - Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued.
  - The tax liability shall be adjusted in such manner as may be prescribed

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- ***Particulars of the Debit and Credit Notes - Rule 53(1A)*** - There is no prescribed format, but credit and debit note issued by a supplier must contain the following particulars, namely: -

    1. Name, address and GSTIN of the supplier.
    2. Nature of the document.
    3. A consecutive serial number not exceeding 16 characters.
    4. Date of issue of the document.
    5. Name, address and GSTIN or UIN, if registered, of the recipient.
    6. Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un- registered.
    7. Serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply.
    8. Value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient.
    9. Signature/digital signature of the supplier/his authorized representative.

12. E-INVOICING

12.1 - What is E-invoicing

- E-invoicing is not generation of invoice by a government portal.
- Taxpayers will continue to create their GST invoices on their own Accounting/ Billing/ ERP Systems as per e-invoice schema.
- These invoices will then be reported to 'Invoice Registration Portal (IRP)'. On such reporting, IRP will generate a unique 'Invoice Reference Number (IRN)', digitally sign it and return the e-invoice to the supplier.
- A GST e-invoice will be valid only with a valid IRN.
- Presently, invoices, credit notes and debit notes, when issued by notified persons (to registered persons (B2B) or for the purpose of exports) are covered under e-invoice.

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12.2 - From when to issue E-invoices

- 'e-invoicing' has been introduced for reporting of business to business (B2B) invoices to GST System, beginning from 1st January 2020 on voluntary basis.
- With effect from 1st October, 2020, there is a switch from voluntary to mandatory e-invoicing for certain notified category of taxpayers.
- A relaxation has been provided to these notified categories of taxpayers till 31.10.2020 vide Notification No. 73/2020 dated 01.10.2020. In respect of invoices raised by them between 1.10.2020 and 31.10.2020, they are permitted to upload these invoices on e-invoicing portal within 30 days from the date of invoice.
- In case, e-invoice is issued {according to Rule 48(4)}, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

12.3 - Class of persons notified to mandatorily issue E-invoice

- ***With effect from 01.08.2023, such limit has been reduced to Rs. 5 crore. Thus, e-invoicing has been made mandatory for all registered businesses with an aggregate turnover in any preceding financial year from 2017-18 onwards greater than Rs. 5 crore.***
- ***Such persons will be called notified persons.***
- If the invoice issued by a notified person is in respect of supplies made by him tax on which is payable under reverse charge under section 9(3), e-invoicing is applicable.
- On the other hand, where specified category of supplies are received by notified person from unregistered persons [attracting reverse charge under section 9(4)] or through import of services, e-invoicing doesn't arise/ not applicable.
- E-invoicing is also not applicable for import of goods (Bills of Entry).
- ***Every invoice, issued by above persons, in any manner other than the manner specified in the rule 48(4) shall not be treated as an invoice.***
- ***E invoicing is applicable even in case of supply made by registered person to Government department or agencies or local authority or PSU registered solely for the purpose of TDS as per Section 51.***

12.4 - Exemption from E-invoicing

- Following entities are exempt from the mandatory requirement of e-invoicing:

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  1. Special Economic Zone units
  2. Insurer or banking company or financial institution including NBFC
  3. GTA supplying services in relation to transportation of goods by road in a goods carriage
  4. Supplier of passenger transportation service
  5. Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
  6. Government Department and Local Authority
- In case of supplies made by notified persons to SEZ units, e-invoices need to be issued.

12.5 - Advantages of E-invoicing

- Auto-reporting of invoices into GST return and auto-generation of e-way bill (wherever required).
- GSTR-1 can also be auto- populated with the e-invoice data.
- On receipt of information through GST System, buyer can do reconciliation with his Purchase Order.
- Facilitate standardisation and inter- operability leading to reduction of disputes among transacting parties, improve payment cycles, reduction of processing costs and thereby greatly improving overall business efficiency.

- since a complete trail of B2B invoices is available with the Department, it will enable the system-level matching of input tax credit and output tax thereby reducing the tax evasion.
- Where e-invoicing is applicable, there is no need of issuing invoice copies in triplicate/duplicate.

12.6 - How e-invoice is generated and how GST system uses it

- The taxpayer first prepares and generates his invoice using his own ERP/ accounting/ billing system or manual system.
- The invoice must conform to the e-invoice schema (standard notified format) and must have the mandatory parameters.
- The details of this invoice are uploaded/reported by the taxpayer to the Invoice Registration Portal (IRP). This way taxpayer registers his supply transaction on IRP.
- On uploading, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' after digitally signing the e-invoice and adding a QR Code (Quick Response Code).
- Then, the supplier shares the e-invoice with the receiver (along with QR Code).
- IRP sends the e-invoice data along with IRN to the GST System as well as to E- Way Bill System.
- The GST system will auto-populate them into GSTR-1 of the supplier and GSTR- 2A of respective receivers.
- ***Where needed, the seller can cancel IRN for an e-invoice already reported by reporting it on IRP within specified time. Amendment of e-invoice already uploaded on IRP will be done only on GST portal. Amendment of invoices is not possible through the IRP.***

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12.7 - Other key points

- E-invoice Schema - Uniform standard format (containing specified fields) applicable for all the businesses across the country is known as 'e-invoice schema'. It is notified as ***Form GST INV-1.***
- E-invoice schema mandates what particulars shall be reported in electronic format to IRP. By this, e-invoices generated by one software can be read by any other software, thereby eliminating the need of fresh/manual data entry.
- ***Invoice Registration Portal (IRP)*** - IRP is the website for uploading/reporting of invoices by the notified persons.
- ***Invoice Reference Number*** - GST invoice will be valid only with a valid IRN IRN is different from invoice number. Invoice no. (e.g., ABC/1/2019-20) is assigned by supplier and is internal to business. Its format can differ from business to business and also governed by relevant GST rules. IRN, on other hand, is a unique reference number (hash) generated and returned by IRP, on successful registration of e-invoice.
- ***ECO*** - The e-invoicing system is also ***available for the E-Commerce Operators (ECO)*** to report the invoices to the Invoice Registration portal, generated by them on behalf of the suppliers.

- ***Bulk uploading*** of invoices to IRP is also possible.
- ***QR code*** - Upon successful registration of invoice on IRP, it will return a signed e-invoice to the supplier with IRN and QR (Quick response) Code. The QR code enables quick view, validation and access of the invoices from the GST system from hand-held devices.
- ***Dynamic QR code*** - Invoice issued by a registered person (except specified class of persons who have been exempted), whose ***aggregate turnover in a financial year exceeds Rs.500 crores, in respect of B2C supplies*** (supply of goods or services or both to an unregistered person) shall have Dynamic QR code.
- A Dynamic Quick Response (QR) code made available to buyer by such registered person through digital display (with payment cross- reference) shall be deemed to be having QR code. The purpose of this provision is to enable and encourage digital payments where buyer can scan the dynamic QR code and make payment from mobile wallet directly.
- This has no relevance or applicability to the e-invoicing in respect to B2B supplies by notified class of taxpayers. Dynamic QR Code will be generated by the seller himself either on the Point of Sale (PoS) machine or the invoice issued.
- CBIC has clarified that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. Whenever e-invoice has been generated, production of the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

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ILLUSTRATIONS

Illustration 1

Sultan Industries Ltd., Delhi, entered into a contract with Prakash Entrepreneurs, Delhi, for supply of spare parts of a machine on 7th September.

- The spare parts were to be delivered on 30th September.
- Sultan Industries Ltd. removed the finished spare parts from its factory on 29th September.

Determine the date by which invoice must be issued by Sultan Industries Ltd. under GST law.

Illustration 2

MBM Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances.

- On April 1, it has entered into an annual maintenance contract with P for its Air Conditioner and Washing Machine.
- As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered.
- During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract.

When should MBM Caretakers issue the invoice for the services rendered?

Illustration 3

The aggregate turnover of Sangri Services Ltd. exceeded Rs. 20 lakhs on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September.

You are required to advice Sangri Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.

Illustration 4

Shyam Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice.
You are required to advise him regarding same.

Illustration 5

Determine whether the following statements are true or false:

(i) A registered person shall issue separate invoice for taxable and exempted goods, when supplying both taxable as well as exempted supplies to an unregistered person

(ii) A NBFC can issue a consolidated tax invoice at the end of every month for the supply made during that month.

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12. ACCOUNTS & RECORDS

Contents

- Accounts and other records to be maintained under GST.
- Mode of maintenance of accounts and records.
- Audit of accounts.
- Consequence of failure to maintain the records.
- Period of retention of records.

1. INTRODUCTION

Every taxpayer is required to self-assess the taxes payable and furnish a return for each tax period. Every registered person shall keep and maintain all records at his principal place of business. It is not mandatory to maintain the accounts in electronic form. Accounts and records may be maintained either electronically or manually. Further, there is no prescribed format for maintaining the accounts.

Chapter VIII – Accounts and Records [Section 35 and 36] of the CGST Act and **Chapter VII – Accounts and Records [Rules 56 to 58] of the CGST Rules, 2017** enumerates –

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- the accounts and records required to be maintained by a taxpayer, and
- the period for which accounts and records are to be preserved.

2.ACCOUNTS AND RECORDS - SECTION 35

2.1 - Who is required to maintain his book of accounts and at which place?

Every registered person shall keep and maintain his books of accounts ***at his principal place of business (PPoB)*** and books of accounts relating to additional place of business (APoB).

2.1.1 - In case of more than one place of Business

Where there is more than one PoB specified in the certificate of registration, ***the accounts relating to each PoB shall be kept at such PoB.***

2.1.2 - Supply of accounts through an auction

In case of supply of goods through an auction like tea, rubber, coffee, ***the principal and auctioneer may declare the warehouses where such goods are stored as their APoB.***

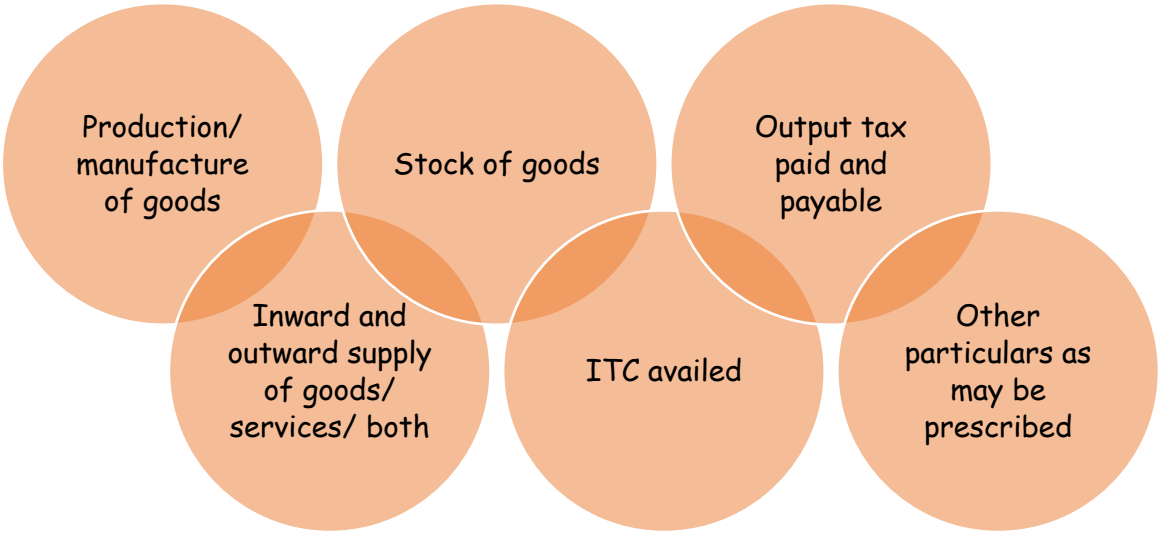
They may maintain the books relating to APoB at their PPoB instead after intimation to the jurisdictional proper officer (P.O.) in writing.

The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the

principal and the auctioneer for the purpose of supply of tea through a private treaty, shall be eligible to avail ITC

2.1 Accounts and records to be maintained

True and correct account of [Section 35(1)] –



2.2.1 - Records prescribed by the rules –

In addition to the records as mentioned in section 35(1), the rules provide that the registered person shall also maintain a true and correct account of –

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- ***Goods/ services imported or exported,***
- ***Supplies attracting payment of tax on reverse charge basis*** along with relevant documents,
- Separate accounts of ***advances received, paid, adjustments*** made thereto,
- Particulars of –
  - ***Name and complete address of the supplier*** form whom he has received goods/ services chargeable to tax,
  - ***Name and complete address of the person to whom he has supplied*** goods/ services.
- Particulars of ***complete addresses of premises where goods are stored*** by him.
  If any taxable goods are found stored at any place(s) other than those declared, without the cover of any valid documents – P.O. shall determine the amount of tax payable on such goods as if they have been supplied by the registered person.

2.2.2 - Records to be maintained by only by supplier other than a supplier opting for composition levy

a) ***Stock of goods*** containing particulars of –

   a. Opening balance,
   b. Receipt, supply, goods lost, stolen, destroyed,
   c. Written off or disposed off by way of gift/ free sample,
   d. Balance of stock.

b) ***Details of tax*** containing –

a. Tax payable including reverse charge,
b. Tax collected and paid,
c. Input tax and ITC claimed,
d. Register of tax invoice, credit notes, delivery challan.

2.2.3 - Records to be maintained by agent

- Authorisation received from principal
- Particulars of goods/ services received on behalf of principal
- Particulars of goods/ services supplied on behalf of principal
- Details of accounts furnished to every individual
- Tax paid on receipts or on supply effected on behalf of every principal

2.2.4 - Additional records to be maintained by a manufacturer

Apart from other records, every registered person manufacturing goods, has to maintain ***monthly production accounts*** showing –

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- ***quantitative details of raw materials/ services used*** in the manufacture, and
- ***quantitative details of goods so manufactured*** including waste and by-products thereof.

2.2.5 - Additional records to be maintained by service provider

Every registered person supplying services has to additionally maintain accounts showing quantitative details of –

- ***goods used*** in the provision of services,
- details of ***input services utilized***, and
- details of the ***services supplied.***

2.2.6 - Records to be maintained by a person executing works contract

Names and addresses of persons on whose behalf the works contract is executed.	Description, value and quantity of good or services received for execution of the works contract	Description, value and quantity of goods or services utilised	Details of payment received in respect of each works contract	Names and addresses of suppliers from whom he received goods or services.

2.2.7 - Records to be maintained by owner or operator of godown/ warehouse and transporters

Every owner or operator or any other place used for storage of goods and every transporter shall maintain ***records of the consignor, consignee and other relevant details as prescribed***.

These records shall be maintained ***irrespective of whether*** such owner/ operator of godown/ warehouse and transporter is a ***registered person or not***. If they are already registered, they shall obtain a ***unique enrolment number*** by applying electronically at the GST Common portal.

Records to be maintained by the transporter

- Records of goods transported, delivered and goods stored in transit by him along with GSTIN of the registered consignor and consignee for each of his branches.

Records to be maintained by an owner/ operator of a warehouse/ godown

- Books of accounts with respect to the period for which the particular goods remain in the warehouse, including particulars relating to dispatch, movement, receipt and disposal of such goods.

2.2.8 - Records to be maintained by a custodian/ clearing and forwarding agent

Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain ***true and correct records in respect of goods handled by him on behalf of such registered person*** and shall produce the details thereof as and when required by the P.O.

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2.3 - Power of the commissioner regarding maintenance of records

- The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.
- Where the Commissioner considers that any class of persons is not in a position to keep and maintain accounts in accordance with the above provisions, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

2.4 - How the records will be maintained

- The registered person may keep and maintain such accounts and other particulars in ***electronic form*** in such manner as prescribed –
    - The registered person may keep and maintain the accounts and other particulars ***in electronic form stored on any electronic device.***
    - The record so maintained shall be ***authenticated by means of a digital signature.***
    - ***Proper back-up*** of records shall be maintained and preserved.
    - On demand, the registered person shall produce –

- the records, duly authenticated by him, in hard copy or in any electronically readable format, and
- details of such files, passwords of such files and explanation for codes used for access and any other information required for accessing them.

- ***No entry in the registers, accounts and documents shall be erased, effaced or overwritten.***
  - ***Any incorrect entry shall be scored out under attestation***, and thereafter correct entry shall be recorded.
  - ***Where the registers are maintained electronically*** – A log of every entry edited or deleted shall be maintained.
- Each volume of books of account maintained manually shall be ***serially numbered***.

2.5 - Failure to maintain the accounts

Where the registered person fails to account for the goods/ services/ both in accordance with the provisions of this section, the ***P.O. shall determine the amount of tax payable on the goods/ services/ both, that are not accounted*** for, as if the same had been supplied by such person.

3.PERIOD OF RETENTION OF ACCOUNTS

The books of accounts and records shall be maintained by the registered person ***until the expiry of 72 months from the due date of furnishing the annual return for the year*** pertaining to such accounts and records.

In case the registered person is a party to any appeal/ revision/ other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, or is under investigation for any offence under Chapter XIX – ***He shall retain the books and records relating to the subject matter of such appeal or revision for –***

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a) A period of ***1 year after final disposal*** of such appeal/ revision/ proceedings/ investigation, ***OR***

b) A ***period as specified above*** (i.e., 72 months)

whichever is later.

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Ahil Varshan

Thank you so much
It is becaus of you Tax classes I was able to pass in Paper 4 The GST fast track course of Shiva Teja sir helped me a lot

GURRAM JANVITHA

Thanks to Shiva Teja Sir, Suraj Sir, Sathya Sir. Had a great journey with IndigoLearn.

Suhani Kochar

Very well explained sir
Thank you so much sir

Sai Suparna Puttu

Thank you for your support and blessing to us.

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Soniya S

You have been a great support to my success...I successfully cleared my group-1 exam especially taxation with the help of those classes I could clear exam..
Thank you so much Indigolearn

Preethi S

Taxation was very hard to undersatnd for me in my 1st attempt. But thanks Shiva Teja Sir for exceptional Taxation lectures, i scored 61. I would strongly recommend him. Your passion and clear explanations made learning enjoyable.

Prachi Khetal

Thankyou so much sir for this video lec, it is really very helpful.

Abhiram

I have taken taxation revision class for ca inter. From past 2 attempts I failed and got low marks is tax but in May 2024 I have secured 72 marks in taxation that is because of the detailed revision class by ca shiva teja sir, it helped me a lot while revising for the tax

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13. E-WAY BILL

Contents

- What is E-way bill [Sec 68]
- How and when to generate
- Special cases when threshold limit is not considered
- Who should generate?
- Consolidated E-way bill
- Validity of E-way bill

1. INTRODUCTION

1.1 – Statutory Requirement

- Under GST regime, for quick and easy movement of goods across India without any hinderance, all the check posts across the country are abolished.
- However, in order to monitor the movement of goods for controlling any tax evasion, e-way bill system has been introduced.
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- Under this system, a taxpayer - prior to movement of goods via a conveyance - would inform each transaction's details to the tax department, obtain an acknowledgement number for having thus informed, and then use this acknowledgement number as a valid document accompanying the conveyance carrying goods.
- ***Section 68*** of the CGST Act stipulates that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed

2. E-WAY BILL

E-way bill *– means an electronic document generated on the GST portal evidencing movement of goods. A waybill is a receipt or a document issued by a carrier giving details and instructions relating to the shipment of a consignment of goods.*

2.1 – How to Generate

- E-way Bill is generated ***electronically in Form GST EWB 01*** on the common portal - www.ewaybillgst.gov.in

- The facility of generation, cancellation, updation and assignment of e-way bill is available to the supplier, recipient and the transporter, as the case may be.
- E-way Bill can be generated through various modes like Web (Online), Android App, SMS, using Bulk Upload Tool and API (Application Program Interface) based site to site integration etc.
- The pre-requisite for generation of e-way bill is that the person who generates e- way bill ***should be a registered person on GST portal and he should register on the e-way bill portal.***
- If the transporter is not registered person under GST it is mandatory for him to get enrolled on e-waybill portal (https://ewaybillgst.gov.in) before generation of the e-way bill.
- Upon generation of the e-way bill on the common portal, ***a unique e-way bill number (EBN)*** shall be made available to the supplier, the recipient and the transporter on the common portal

2.2 - When to generate - Rule 138(1)

- Whenever there is a movement of goods of consignment value exceeding Rs. 50,000:
    - in relation to a supply; or
    - for reasons other than supply; or
    - due to inward supply from an unregistered person,
- The registered person who causes such movement of goods shall furnish the information relating to the said goods as specified in Part A of Form GST EWB- 01 before commencement of such movement.

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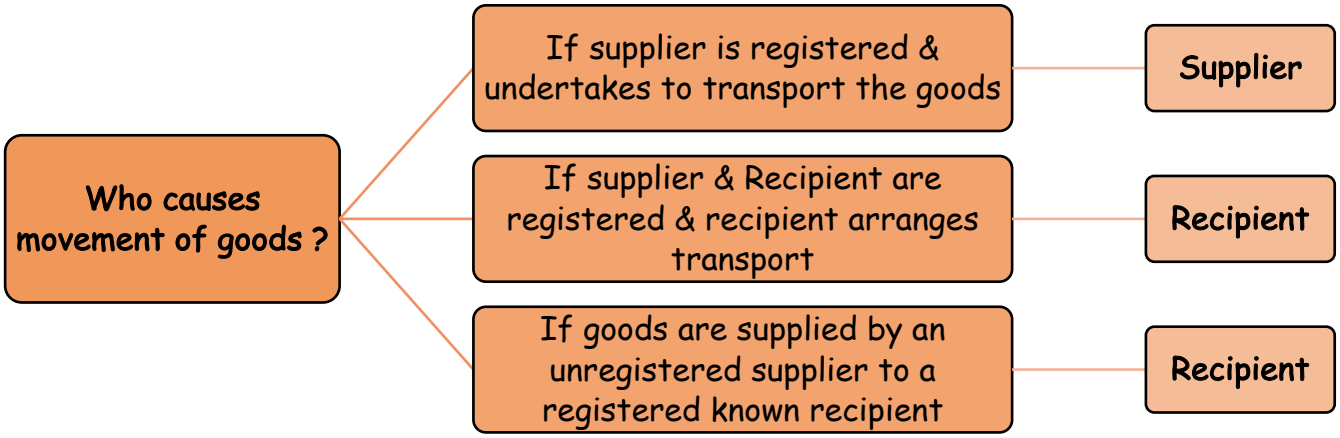
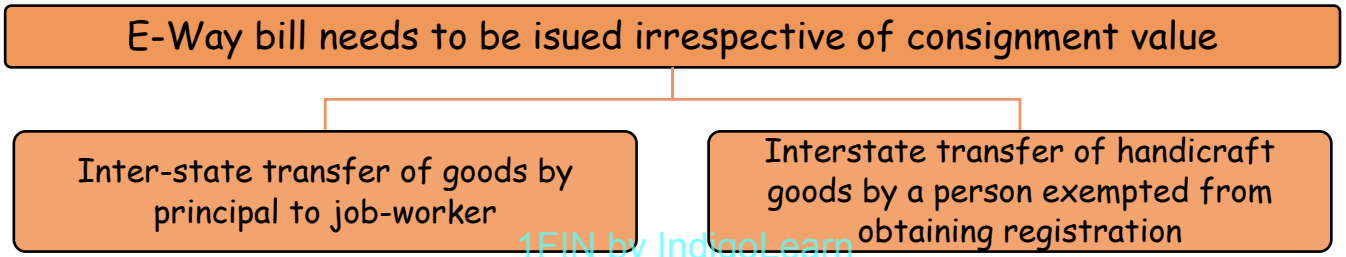
- Information is to be furnished prior to the commencement of movement of goods and is to be issued whether the movement is in relation to a supply or for reasons other than supply.
- Consignment value of goods shall be the value:
    - Determined in accordance with the provisions of section 15,
    - Declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and
    - Also includes the Central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and
    - Shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.
- In case of movement of goods for reasons other than supply, the movement is occasioned by means of a delivery challan which has to necessarily contain the value of goods, the value given in the delivery challan should be adopted in the e-way bill.

2.3 – Who causes movement of goods?



3. SPECIAL CASES WITH REGARD TO E-WAY BILL

3.1 - Situations where E-way bill needs to be issued even if the value of the consignment is less than Rs.50,000



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3.1.1 - Inter-State transfer of goods by principal to job-worker

- Where goods are sent by a principal
- to a job worker
- and both of them are located in different State or Union territory
- the e-way bill shall be generated either by the principal or the job worker, if registered.
- irrespective of the value of the consignment value.

3.1.2 - Inter-State transfer of handicraft goods by a person exempted from obtaining registration

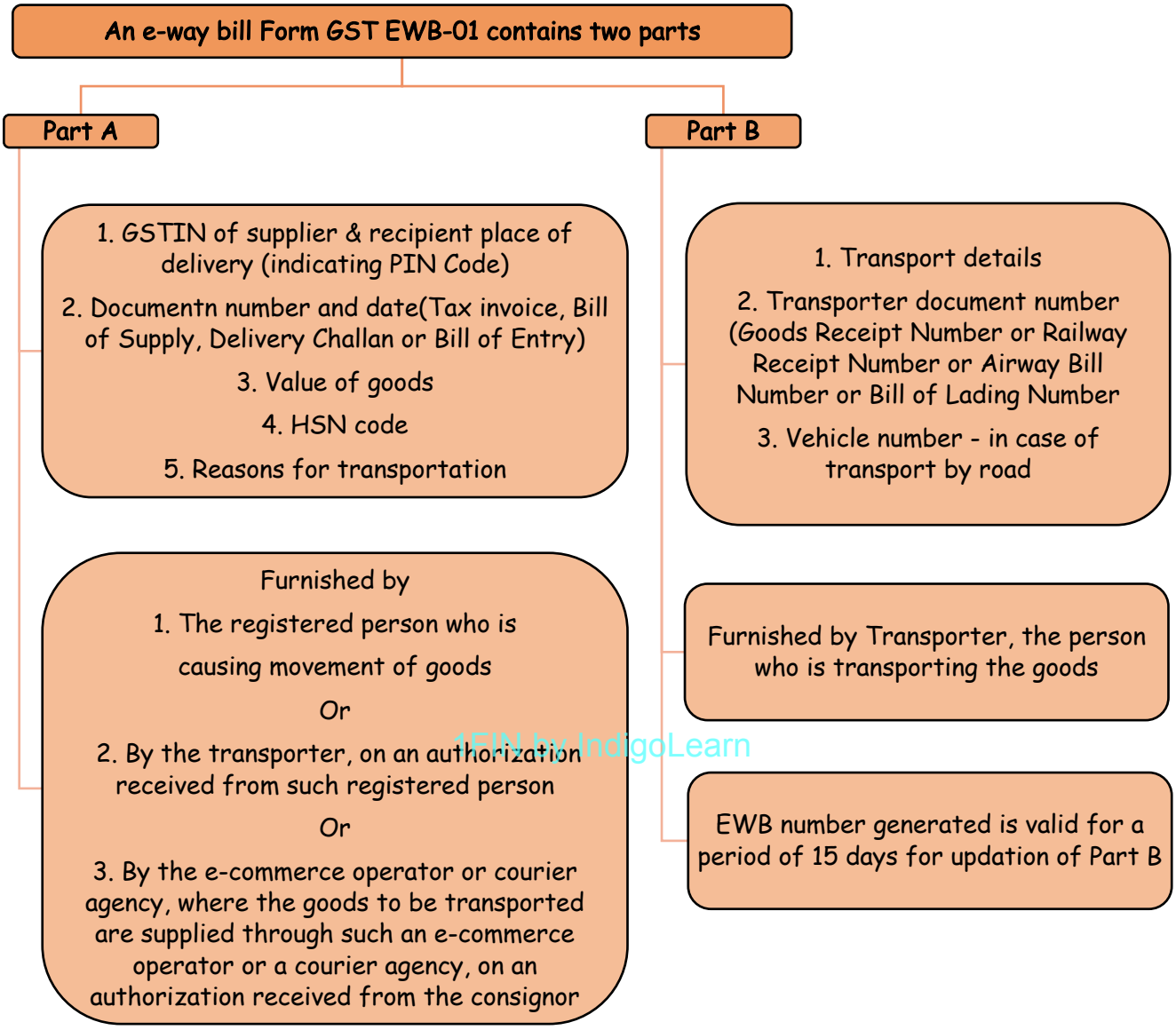
- Where handicraft goods are transported from one State or Union territory
- to another State or Union territory
- by a person who has been exempted from the requirement of obtaining registration [under clauses (i) and (ii) of section 24],
- the e-way bill shall be generated by the said person
- irrespective of the value of the consignment

3.2 - E-way Bill in case of 'Bill to Ship To' Model

- 'Bill to Ship To' - MR. A places an order to MR. B to ship the goods to Mr. C. In this case two supplies are involved and accordingly two tax invoices are required to be issued.

- It is clarified that as per the CGST Rules, 2017, either A or B can generate the e-Way Bill but it may be noted that only one e-Way Bill is required to be generated.

4. INFORMATION TO BE FURNISHED IN E-WAY BILL



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5. WHO SHOULD GENERATE E-WAY BILL?

- ***Where the goods are transported by a registered person –***
    - whether as consignor or as the consignee
    - whether in his own conveyance or a hired one or a public conveyance, by road
    - the said person shall have to generate the e-way bill
    - by furnishing information in part B on the common portal
- ***Where the e-way bill is not generated by the registered person -***
    - Where the goods are handed over to the transporter, for transportation of goods by road,
    - the registered person shall furnish the information relating to the transporter in Part B on the common portal and

- the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A

- ***Where the goods are transported by air or vessel,***
  - the e-way bill shall be generated by the registered person,
  - being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, information in part B.
- ***Where the goods are transported by railways***
  - the e-way bill shall be generated by the registered person,
  - being the supplier or the recipient
  - either before or after the commencement of movement
  - However, there is no requirement to carry e-way bill along with the goods (railways has to carry invoice or delivery challan or bill of supply as the case may be along with goods)
  - e-way bill generated for the movement is required to be produced at the time of delivery of the goods.
  - Railways shall not deliver goods unless the e-way bill required under rules is produced at the time of delivery.
  - Transport by railways does not include cases where leasing of parcel space by Railways takes place.
- ***When the consignment value is less than Rs.50,000 –***
  - The registered person or,
  - the transporter may,
  - at their option,
  - generate and carry the e-way bill
  - even if the value of the consignment is less than Rs.50,000

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- ***Where the movement is caused by an unregistered person***
  - either in his own conveyance or a hired one or through a transporter,
  - he or the transporter may,
  - at their option, generate the e-way bill
  - The unregistered person can create a login id and password for the purpose of generating e-way bill.
- ***Where the goods are supplied by an unregistered supplier to a recipient who is registered***
  - The movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods and
  - He is supposed to generate the e-way bill.

6. SITUATIONS WHERE E-WAY BILL IS NOT REQUIRED TO BE GENERATED

1. where the goods being transported are the ones given below.

Goods specified in Annexure to Rule 138	
S.No.	**Description**
1.	Liquefied petroleum gas for supply to household and non- domestic exempted category (NDEC) customers

2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles other than imitation Jewellery
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral

2. where the goods are being transported by a non-motorized.
3. where the goods are being transported.
   - from the customs port, airport, air cargo complex and land customs station
   - to an inland container depot or a container freight station for clearance by Customs
4. In respect of movement of goods within such areas as are notified under of rule 138(14)(d) of the State or Union territory GST Rules in that particular State or Union territory
5. where the goods [other than de-oiled cake], being transported, are exempt from tax.
6. where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel.
7. where the supply of goods being transported is treated as no supply under Schedule III of the Act.

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8. where the goods are being transported under customs bond and under customs supervision or under customs seal.
9. where the goods being transported are transit cargo from or to Nepal or Bhutan.
10. Transport of goods by the Canteen Stores Depot to the Unit Run Canteens or to the authorized customers and supply of goods by the Unit Run Canteens to the authorized customers.
11. Transport of heavy water and nuclear fuels by Department of Atomic Energy to Nuclear Power Corporation of India Ltd.
12. Any movement of goods caused by defense formation under Ministry of defense as a consignor or consignee.
13. where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail.
14. where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.
15. where empty cargo containers are being transported.
16. where the goods are being transported up to a distance of 20 km from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of

the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.

7. SPECIAL POINTS REGARDING E-WAY BILL

7.1 - When it is not mandatory to furnish the details of conveyance in Part-B

- As per rule 138(3), e-way bill is valid for movement of goods by road only when the information in Part-B is furnished.
- However, details of conveyance may not be furnished in Part-B of the e-way bill where the goods are transported for a distance of up to 50 km within the State/Union territory

7.2 - Transfer of goods from one conveyance to another

- Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in Part B of the e-way bill on the common portal.
- Then a unique EBN is generated.
- The consignor/recipient, or the transporter, may assign the e-way bill number (EBN) to another registered/enrolled transporter for updating the information in Part B for further movement of the consignment [Rule 138(5A)].
- However, once the details of the conveyance have been updated by the transporter in Part B, the consignor or recipient, shall not be allowed to assign the e-way bill number to another transporter.

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7.3 - Consolidated E-way bill - Rule 138(6)

- Where multiple consignments are intended to be transported in one conveyance, the transporter carrying multiple consignments of various consignors and consignees in a single vehicle can generate and carry a single document - consolidated e-way bill instead of carrying separate document for each consignment in a conveyance.
- After e-way bill has been generated by the consigner or recipient, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in ***Form GST EWB-02*** may be generated by him on the said common portal prior to the movement of goods.
- Consolidated EWB does not have any independent validity period. Further, individual consignment specified in the Consolidated EWB should reach the destination as per the validity period of the individual EWB.

7.4 - Information used in filing GST Returns.

- The information furnished in Part A of the e-way bill shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in Form GSTR-1 [Rule 138(8)].

- However, when the information has been furnished by an unregistered supplier/unregistered recipient, he shall be informed electronically, if the mobile number or the e-mail is available [Proviso to rule 138(8)].

7.5 - Cancellation of e-way bill

- Where an e-way bill has been generated, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within 24 hours of generation of the e-way bill [Rule 138(9)].
- However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

7.6 - Validity period of e-way bill/consolidated e-way bill [Rule 138(10)]

7.6.1 - In cases other than Over Dimensional Cargo and Multi model shipment which involves at least leg of transport by ship

Distance within Country	Validity period from relevant date
Up to 200 Kms	1 Day
For every 200 Kms or part thereof thereafter	1 Additional Day

In case of validity of E- way bill –

Earlier for distance up to 100 KM validity of E-way bill was one day but now the same has been reduced to 200KM. {In net effect, for distance up to 200 KM – Validity of e-way bill is one day and for every part thereof – one additional day}

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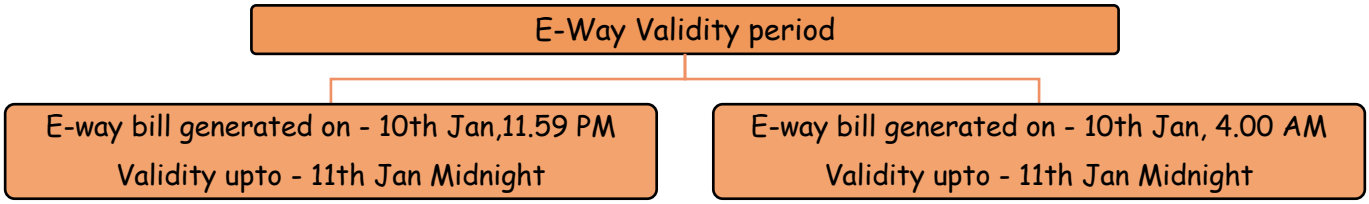
7.6.2 - In cases other than Over Dimensional Cargo and Multi model shipment which involves at least leg of transport by ship

Distance within Country	Validity period from relevant date
Up to 20 Kms	1 Day
For every 20 Kms or part thereof thereafter	1 Additional Day

- ***Relevant date*** means the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the ***period expiring at midnight of the day immediately following the date of generation of e-way bill.***
- The validity of the e-way bill starts when first entry is made in Part-B i.e., vehicle entry is made first time in case of road transportation or first transport document number entry in case of rail/air/ship transportation, whichever is the first entry.
- *Validity is not re-calculated forsubsequent entries in Part-B.*

Over dimensional cargo means a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed under the Motor Vehicles Act, 1988.
Multi model shipment means goods are going through 2-3 conveyances and one of them is ship.

- ***Example***



7.6.3 - Extension of validity period

- ***Extension by Commissioner***: - Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein.
- ***Extension by Transporter***: - Transporter can extend the validity of the e-way bill, if the consignment is not being reached the destination within the validity period due to exceptional circumstance like
  - natural calamity,
  - law and order issues,
  - trans-shipment delay,
  - accident of conveyance, etc.

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- He needs to explain this reason in details while extending the validity period in Part B.
- This option is available for extension of e-way bill before 8 hours and after 8 hours of expiry of the validity [Rule 138(12)].

7.6.4 - Validity in another state/UT

- The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory [Rule 138(13)]

7.7 - Acceptance of e-way bill

- Where the information in Part A has been furnished by one party, the details of the e-way bill generated shall be made available to the other party on the common portal, and such other party shall communicate his acceptance or rejection of the consignment covered by the e-way bill [Rule 138(11)]

Party generating information in Part A	Accepted or Rejected by
Supplier / Transporter	Recipient
Recipient / Transporter	Supplier

- The time-limit specified for accepting/rejecting is:

- 72 hours of the details being made available to him on the common portal or
- the time of delivery of goods whichever is earlier.

- In case, the acceptance or rejection is not communicated within the specified time, it shall be deemed to have been accepted.

1. E-way bill is not valid for movement of goods without vehicle number on it.
2. Once E-way bill is generated, it cannot be edited for any mistake. However, it can be cancelled within 24 hours of generation.
3. E- Way Bill may be updated with vehicle number any number of times.
4. The latest vehicle number should be available on e-way bill and should match with the vehicle carrying it in case checked by the department.

8. OTHER PROCEDURES AND OTHER DOCUMENTS ALONG WITH E-WAY BILL

8.1 - Obligations of person in charge of conveyance

- The person-in-charge of a conveyance shall carry
  - The invoice or bill of supply or delivery challan, as the case may be; and
  - A copy of the e-way bill either in
  - physical form or
  - the e-way bill number in electronic form or
  - mapped to a RFID (Radio Frequency Identification device) embedded on to the conveyance [Only in case of road]

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- in such manner as may be notified by the Commissioner [Rule 138A(1)

8.2 - Documents in lieu of e-way bill

- Where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill:
  - tax invoice or
  - bill of supply or
  - a delivery challan, where the goods are transported for reasons other than by way of supply [Rule 138A(5)]

8.3 - Invoice Reference Number in lieu of tax invoice

- A registered person may obtain an Invoice Reference Number from the common portal by uploading, a tax invoice issued by him in the prescribed form and produce the same for verification by the proper officer in lieu of the tax invoice.
- Such number shall be valid for a period of 30 days from the date of uploading. [Rule 138A (2)].
- In case, e-invoice is issued, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice [Rule 138A(2)].

- In both cases, the registered person will not have to upload the information in Part A of E-way bill for generation of e-way bill and the same shall be auto- populated by the common portal on the basis of the information furnished in the prescribed form [Rule 138A(3)].

8.4 - Verification of documents and conveyances - Rule 138B

- The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to ***intercept any conveyance*** to ***verify the e-way bill in physical or electronic form*** for all inter-State and intra-State movement of goods.
- The Commissioner shall get ***RFID readers installed at places*** where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e- way bill has been mapped with the said device.
- However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.
- A ***summary report*** of every inspection of goods in transit shall be recorded online by the proper officer in ***Part A*** of a prescribed form ***within 24 hours*** of inspection and the ***final report in Part B*** of said form shall be recorded ***within 3 days*** of such inspection. [Rule 138C]
- However, where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, ***extend the time*** for recording of the final report in Part B of said form, for a ***further period not exceeding 3 days***.

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- The period of 24 hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted.
- Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State/Union territory or in any other State/Union territory, no further physical verification of the said conveyance shall be carried out again in the State/Union territory, unless a specific information relating to evasion of tax is made available subsequently.

8.5 - Information regarding detention of vehicle - Rule 138D

- Where a vehicle has been intercepted and detained for a period exceeding 30 minutes, the transporter may upload the said information in specified form on the common portal.

8.6 - Restriction on furnishing of information in Part A of Form GST EWB-01 [Rule 138E]

- No person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall not be allowed to furnish the information in Part A of Form GST EWB-01 in respect of following registered persons, whether as a supplier or a recipient:
    1. A person paying tax under composition scheme has not furnished the statement for payment of self-assessed tax for 2 consecutive quarters, or

2. A person paying tax under regular scheme has not furnished the returns for 2 consecutive months, or

3. A person paying tax under regular scheme has not furnished GSTR-1 (Statement of outward supplies) for any 2 months or quarters, as the case may be.

- However, Commissioner may, on receipt of an application from a registered person in prescribed form, on sufficient cause being shown and for reasons to be recorded in writing, by order, in prescribed form allow furnishing of the said information in Part A of Form GST EWB-01, subject to prescribed conditions and restrictions.
- An order rejecting said request shall not be passed without giving the said person a reasonable opportunity of being heard. The permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.
- ***Rule 138E*** of the CGST Rules contains provisions pertaining to blocking of e-way bill generation facility, i.e. disabling the generation of e-way bill. Earlier, a user was not able to generate e-way bill for a GSTIN if the said GSTIN was not eligible for e-way bill generation in terms of rule 138E. It implies that the GSTINs of such blocked taxpayers could not be used to generate the e-way bills neither as supplier (consignor) nor as recipient (consignee).
- Said rule has been amended to relax such restriction. ***Blocking of GSTIN for e-way bill generation would only be for the defaulting supplier GSTIN and not for the defaulting Recipient or Transporter GSTIN.*** Suspended GSTIN cannot generate e-way bill as supplier. However, the suspended GSTIN can get the e-way bill generated as recipient or as transporter. ***[Notification No. 15/2021 CT dated 18.05.2021]***

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8.7 – Generation of Unique Enrollment Number [Rule 138(3) fourth proviso]

Following persons required to generate the e-way bill shall submit the details electronically on the common portal in prescribed form and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person:-

(i) An unregistered person making interState transport of handicraft goods exempted from obtaining compulsory registration and required to generate e-way bill irrespective of the value of the consignment.

(ii) An unregistered person opting to generate e-way bill

14. PAYMENT OF TAX

Contents

- Electronic credit ledger [Sec 49]
- Electronic cash ledger [Sec 49]
- Electronic liability register [Sec 49]
- Manner of set off [Sec 49]
- Interest on delayed payment of tax [Sec 50]

1. INTRODUCTION

1.1 – Various payments to be made

- In the GST regime, the following are payable by any taxpayer to the government:
  - For any intra-state supply, taxes to be paid are the Central GST (CGST), going into the account of the Central Government and the State GST(SGST)/UTGST, going into the account of the concerned State Government.
  - For any inter-state supply, tax to be paid is Integrated GST (IGST) having components of both CGST and SGST.
  - Certain categories of registered persons will be required to pay to the Government account tax deducted at source (TDS) and tax collected at source.
  - In addition, wherever applicable, interest, penalty, fees and any other payment will also be required to be made.
- While paying the output tax liability, the taxpayer can set off the input tax and pay the balance amount.

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1.2 - Manner of utilisation of ITC - Section 49(5)

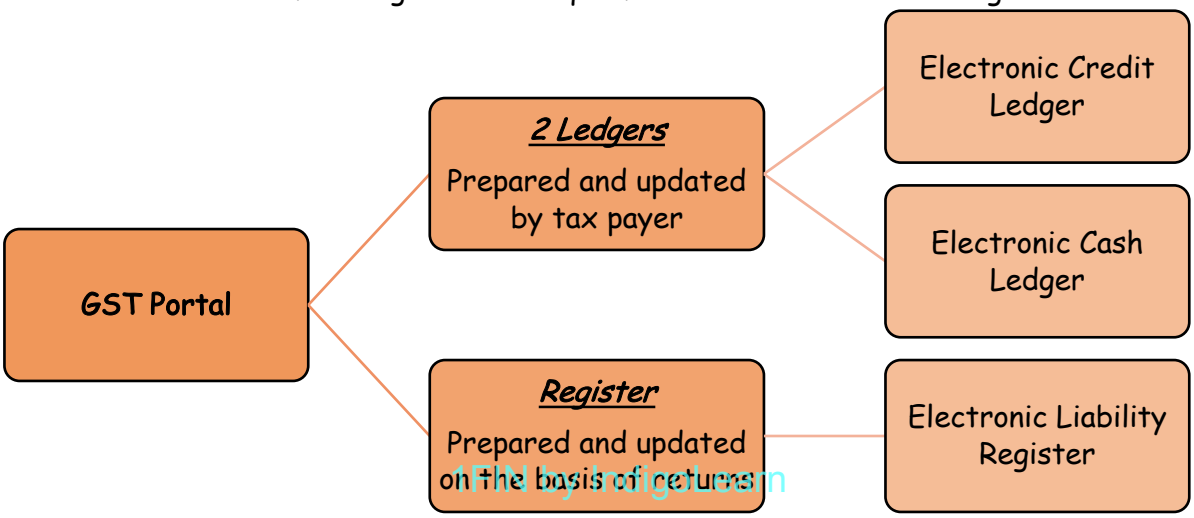
- Entire ITC of IGST is to be fully utilised first before the ITC of CGST or SGST/UTGSTcan be utilized.
- CGST input cannot be set off against SGST/UTGST
- Similarly, SGST/UTGST input cannot be set off against of output liability of CGST or any other SGST/UTGST.

ITC available	Can be set off against Output of	Order of set off

IGST	IGST CGST SGST UTGST	IGST for IGST first Balance IGST of CGST and SGST/UTGST in any order and any proportion
CGST	CGST IGST	1. CGST 2. IGST
SGST/UTGST	SGST UTGST	1. SGST 2. IGST
UTGST	UTGST IGST	1. UTGST 2. IGST

1.3 – Ledgers under GST Regime

- The introduction of E-ledgers is a unique feature under the GST regime.



- Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Cash & Input Tax Credit ledger) and an electronic tax liability register will be automatically opened and displayed on his dash board at all times.
- Electronic Liability register is prepared and updated on the basis of returns furnished by the Registered person or Tax authority.

2. ELECTRONIC CREDIT LEDGER

- Sub-section (2) of section 49 of the CGST Act provides that the self-assessed input tax credit (ITC) by a registered person shall be credited to its Electronic Credit Ledger. It is maintained in a prescribed form [GST PMT 02]
- The amount available in the electronic credit ledger may be used for making any payment towards output tax under CGST or IGST. It is pertinent to note that "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods and/or services made by him or by his agent
- But it excludes tax payable by him on reverse charge basis. Thus, ITC cannot be utilized for tax payable under reverse charge mechanism.
- The credit in this ledger can be used to make payment of ONLY TAX and not for other amounts such as interest, penalty, fees etc.

- In case the Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, has reasons to believe that ITC available in the electronic credit ledger has been fraudulently availed or is ineligible, he may prohibit use of ITC for discharge of any liability under section 49 or for claim of any refund of any unutilized amount.

3. ELECTRONIC CASH LEDGER

3.1 - Payment through cash ledger and modes of deposit

- The Electronic Cash Ledger contains a summary of all the deposits/payments made by a tax payer.
- Electronic Cash Ledger is maintained on the GST Portal in a prescribed form [GST PMT05].
- Any deposit made towards payment of tax, interest, penalty, late fee or any other amount will be credited to the electronic cash ledger.
- Any debit to the electronic cash ledger represents payment therefrom towards tax, interest, penalty, late fee or any other amount.
- The amount reflected in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fee, or any other amount in the prescribed manner.
- Tax under RCM, Interest, penalties and fees, which cannot be paid through electronic credit ledger will be paid through electronic cash ledger.
- The deposit in the electronic cash ledger shall be made through any of the following modes, namely:

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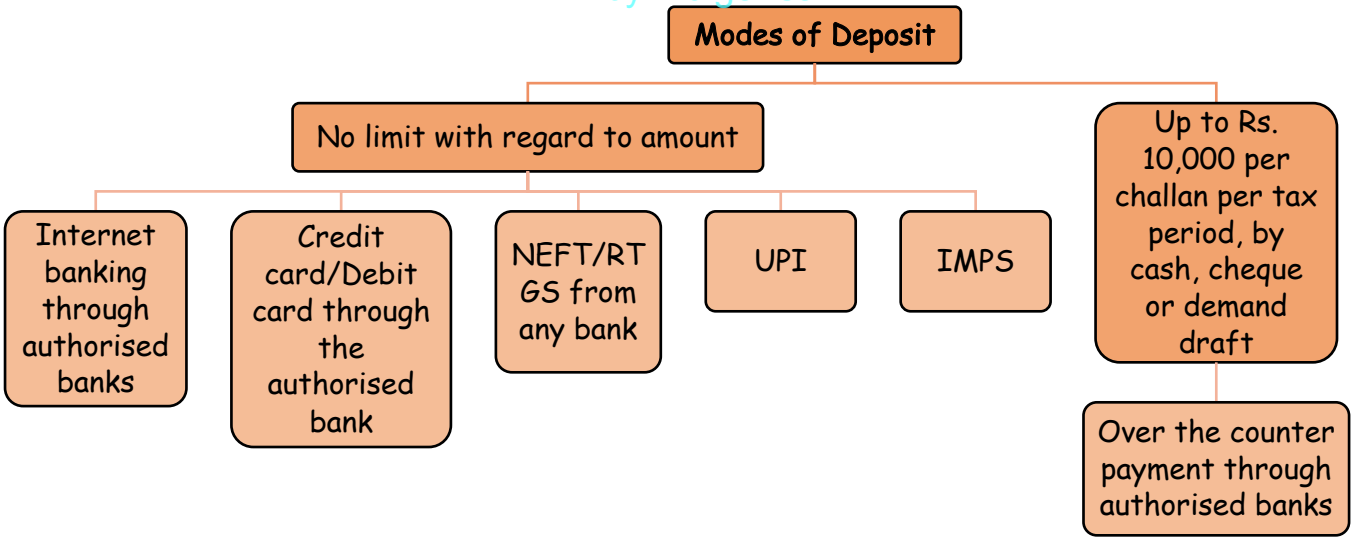

- NEFT stands for National Electronic Fund Transfer.
- RTGS stands for Real Time Gross Settlement.
- UPI stands for Unified Payment Interface
- IMPS stands for Immediate Payment Service
- It may be noted that the ***restriction for deposit up to Rs.10,000 per challan*** in case of an ***Over-the-Counter payment will not apply*** to deposit to be made by

  1) ***Government Departments*** or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;

2) ***Proper officer*** or any other officer authorised to ***recover outstanding dues*** from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties.

3) ***Proper officer*** or any other officer authorised for the amounts collected by way of cash, cheque or demand draft ***during any investigation*** or enforcement activity or any ad hoc deposit.

4) Persons ***notified by Commissioner***.

3.2 - Challans

- The amount is deposited by generation of a challan in GST portal. ***Manual or physical Challans are not allowed*** under the GST regime. It is ***mandatory to generate Challans online on the GST Portal.***
- With regard to the modes of payment, the ***following terms are important***:
  - ***CPIN*** stands for ***Common portal Identification Number***. It is created for every Challan successfully generated by the taxpayer. It is a 14-digit unique number to identify the challan. ***CPIN remains valid for a period of 15 days***.
  - ***CIN*** or ***Challan Identification Number*** is generated by the banks, once payment in lieu of a generated Challan is successful. It is a 18-digit number that is 14-digit CPIN plus 4-digit Bank Code. It is generated in the prescribed form GST PMT 06.
  - CIN is generated by the authorized banks/Reserve Bank of India (RBI) when payments actually received by such authorized banks or RBI and credited in the relevant Government account held with them. It is an indication that the payment has been realized and credited to the appropriate Government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.
  - ***BRN*** or ***Bank Reference Number*** is the transaction number given by the bank for a payment against a Challan.
- There is single Challan prescribed for all taxes, fees, penalty, interest and other payments to be made under the GST regime.
- ***E- challan validity is for 15 days***. The commission for making payment through e-challan has to be borne by the person making the payment.
- Any unregistered person has to make payment on the basis of temporary identification number generated through common portal.
- The mandate form obtained after making NEFT/RTGS payment has to be submitted in the Bank. ***The validity of the mandate form is 15 days***.
- On receipt of the CIN from the collecting bank, the said amount is credited into the electronic cash ledger of the person on whose behalf the deposit is made and the common portal will generate a receipt to this effect.
- Any registered person can deposit more amount than what is required in his electronic cash ledger. However, no interest will be paid by the government on such amount.

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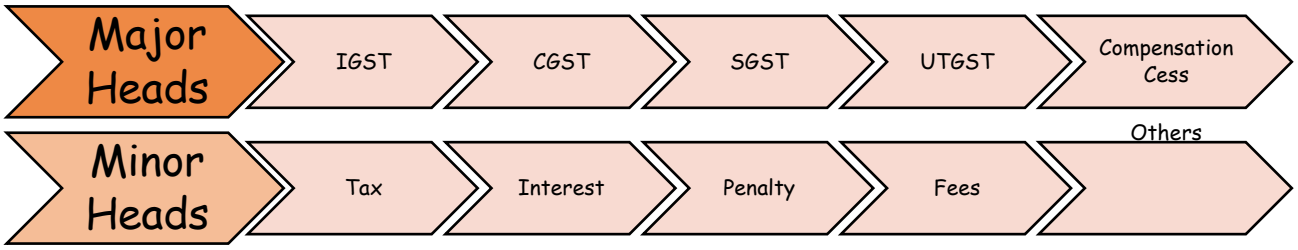
- Where the bank fails to communicate details of Challan Identification Number to the common portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the RBI in cases where the details of the said e-Scroll are in conformity with the details in challan generated in Form GST PMT-06 on the common portal.
- Date of credit into the treasury of the State Government/Central Government is deemed to be the date of debit in the electronic cash ledger and not the actual date of deposit of amount in the electronic cash ledger of the taxable person.
- Where the bank fails to communicate details of Challan Identification Number to the common portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the RBI in cases where the details of the said e-Scroll are in conformity with the details in challan generated in Form GST PMT-06 on the common portal

3.3 - Manner of utilization of amount reflected in Electronic Cash Ledger

- In the e-ledger, information is kept under 2 heads – Major heads and Minor heads



- The ledger is displayed major head-wise i.e., IGST, CGST, SGST/UTGST, and CESS.

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- Each major head is divided into five minor heads: Tax, Interest, Penalty, Fee, and Others. Thus, in the e-ledger, information is kept minor head-wise for each major head.
- A registered taxpayer can make cash deposits in the recognized Banks through the prescribed modes to the Electronic Cash Ledger using any of the Online or Offline modes permitted by the GST Portal.
- New sub-sections (10) and (11) inserted in section 49 of the CGST Act, 2017 w.e.f 01.01.2020 vide Finance Act, 2019 provides a facility to the registered person to transfer an amount from one (major/minor) head to another (major/minor) head in the electronic cash ledger.
- The amount available in the electronic cash ledger can be utilised for payment of any liability for the major and minor heads.
- For instance, if the registered person has made a deposit of tax erroneously i.e., by virtue of human error, under a particular head instead of a specific head, the same can be transferred to the respective intended head vide Form GST PMT-09.
- This Form (GST PMT-09) can be used either for
    - i. transfer of erroneous deposits under any minor head of a major head to any other minor head of same or other major heads or
    - ii. for any of the amounts already lying unutilised under any of the minor heads in Electronic Cash ledger.

iii. transfer of any amount lying in the electronic cash ledger to the electronic cash ledger for CGST/IGST of a distinct person

- For instance, a registered person has deposited a sum of Rs. 1,000 under the head of "Interest" column of CGST & ` 1,000 under the head of "Interest" column of SGST, instead of the head "Fee". Such amount can be transferred using Form GST PMT-09 for making a transfer to the head "Fee". The said transfer is required using the above Form, because when the Registered person has to make the remittance of Tax/Interest/Penalty/ Fee/ Other amount at a stage "Offset Liabilities" in any of the GST Returns/ Forms for Tax payments through Electronic Cash Ledger, adequate amount should be available under the respective head of account.
- Prior to the above amendment, the Registered person has to claim a refund of such erroneous deposit or unutilized amounts using the prescribed Form and make a fresh deposit of tax for utilization under the appropriate head.
- The new section 53A provides for transfer of amount between Centre and States consequential to amendment in section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.
- Section 49 has been amended so as to:

  i. provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger;

  ii. allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person;

  iii. provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger.

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4. ELECTRONIC LIABILITY LEDGER

- Electronic Liability Register will reflect the total tax liability of a taxpayer for a particular tax period.
- It is maintained in a prescribed form [GST PMT-01].
- The following are debited into the Electronic liability ledger:
  - All amounts payable towards tax, interest, late fee and any other amount as per return filed;
  - All amounts payable towards tax, interest, penalty and any other amount determined in a proceeding by an Assessing authority or as ascertained by the taxable person;
  - Interest payable under Section 50.
  - Any interest amount that may accrue from time to time.
- The following are credited:

- Payment of all the liabilities either through Electronic Cash ledger or electronic credit ledger.
- Payment of TDS deducted under section 51, TCS deducted by e- commerce operator under section 52, amount payable under reverse charge basis, amount payable under section 10, amount payable towards payment of interest, penalty, fee or any other amount under the Act.

5. OTHER KEY POINTS

- E-FPB stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for PAN India transaction.
- The E-FPB will have to open accounts under each major head for all governments. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB. For NEFT/RTGS Transactions, RBI will act as E-FPB.
- Sec 49(8) prescribes the chronological order in which the liability of a taxable person has to be discharged:
  - Self -assessed tax and other dues for the ***previous tax periods*** have to be ***discharged first.***
  - The self -assessed tax and other dues for the ***current period*** have to be ***discharged next.***
  - Thereafter any other amount payable including demand determined under section 73 or section 74 to be discharged. In other words, the liability if any, arising out of ***demand notice and adjudication proceedings comes last.***
- This sequence has to be ***mandatorily followed***.
- "Other dues" referred above mean interest, penalty, fee or any other amount payable under the Act or the rules made there under.
- Where a person has claimed refund of any amount from the electronic cash or credit ledger, the said amount shall be debited to the electronic cash or credit ledger.
- If the refund so claimed is rejected, either fully or partly, the amount debited earlier, to the extent of rejection, shall be credited to the electronic cash or credit ledger by the proper officer by an order made in prescribed form [GST- PMT 03].
- If there is any discrepancy in Electronic Credit ledger/Cash Ledger/Liability Register, the same can be intimated to the department. Application for intimating is made in GST PMT-04
- If CIN is not generated even after making payment and submission of mandate form or when after generation, it has not been reflected in the common portal, the person making the deposit or the person on whose behalf the deposit has been made, can make a representation in prescribed form i.e. FORM GST PMT- 07 through the common portal or e-gateway.
- Sub-section (9) of Section 49 provides that when a taxable person has paid the GST, he is ***deemed to have passed on the incidence of such payment of tax to the recipient of such***

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goods and /or services. Onus to establish that incidence of tax has not been passed on to the recipient, becomes relevant in case of Section 54 dealt with "Refund of Tax".

6. INTEREST ON DELAYED PAYMENT OF TAX - SECTION 50

- The tax dues which are not paid within the stipulated time are liable to interest payment. Section 50 of the CGST Act, 2017 provides for applicability of interest for default in payment of taxes within the stipulated time.
- Usually, the balance in electronic credit ledger is exhausted first before utilizing the balance available in the electronic cash ledger. This practice is adopted for a better working capital management.
- GST common portal doesn't have a mechanism to allow a registered person to make part payment of taxes. Thus, if the registered person does not have sufficient amount either in credit ledger or cash ledger, he will have to delay his payment.
- ***Interest*** if any payable by the registered person for delay in remittance of taxes beyond the stipulated due date on account of delay in filing of return under section 39, shall be ***demanded only on the net cash liability of taxes and not on the gross tax liability.***
- ***Interest on delayed payment is charged at 18% p.a.***
- ***The period of interest will be from the date following the due date of payment to the actual date of payment of tax.***
- The payment of interest in case of belated payment of tax should be made voluntarily i.e. even without a demand.
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- The liability for interest can be settled by adjustment with balance in Electronic Cash Ledger but not with balance in electronic credit ledger.
- INTEREST NOT PAYABLE ON ACCOUNT OF DELAY IN FILING GSTR-3B, IF SUFFICIENT BALANCE IS MAINTAINED IN ELECTRONIC CASH LEDGER AS ON THE DUE DATE OF GSTR-3B
- ***Sec 50(3)*** - A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at 18%.
- Sub-section (3) of Section 50 has been substituted retrospectively, with effect from 1st July, 2017, so as to provide for levy of interest on input tax credit wrongly availed and utilized.
- In the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability during the time period starting from such availment and up to such reversal, if the balance of ITC in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC. ***[Circular No. 192/04/2023 GST dated 17.07.2023]***

- Interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39 shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.
- This provision shall not apply where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period. {With effect from 01.09.2020} i.e., if return is furnished after commencement of proceedings then interest would be payable on gross liability.

6.1 – Manner of calculating interest on delayed payment of tax

- In case, the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 or Section 74A in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of **tax which is paid by debiting the electronic cash ledger**, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under section 50(1)
- In all other cases, where interest is payable under section 50(1), the interest shall be calculated on the amount of **tax which remains unpaid**, for the period starting from the date on which such tax was due to be paid till the date such tax is paid at the rate specified under section 50(1)
- Where interest is payable on the amount of ITC wrongly availed and utilised in accordance with section 50(3), the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount at the rate specified under section 50(3).

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- The explanation to the rule lays down that-
    - ***input tax credit wrongly availed shall be construed to have been utilised***, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
    - the ***date of utilisation*** of such input tax credit shall be taken to be-
        - the date, ***on which the return is due*** to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or
        - the date of ***debit in the electronic credit ledger*** when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

7. TRANSFER OF INPUT TAX CREDIT - SECTION 53 OF CGST ACT & SECTION 18 OF IGST ACT

- If the amount of CGST is utilised towards dues of IGST then, per sec. 53 of the CGST Act, there shall be reduction in the amount of CGST, equal to the credit so utilized, and the Central Government shall transfer such amount equivalent to the amount so reduced in CGST account to the IGST account.
- Similarly, if the amount of IGST is utilised towards dues of CGST/UTGST then, per sec.18 of the IGST Act, there shall be reduction in the amount of IGST, equal to the credit so utilized, and the Central Government shall transfer such amount to the CGST/UTGST account.
- However, if the amount of IGST is utilised towards dues of SGST then, an equal amount shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the respective State Government.

8. RULE 86A

- Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have "reasons to believe" that ITC available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger.

Grounds for disallowing debit of an amount from electronic credit ledger

- The reasons for such belief must be based on one or more following grounds:

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- The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.
- The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
- The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration
- The credit is availed by the registered person without having any invoice or debit note or any other valid document for it

Proper authority for the purpose of rule 86A:

- The Commissioner/Principal Commissioner is the proper officer for the purpose of exercising powers under rule 86A. The Commissioner/Principal Commissioner may authorize any officer subordinate to him, not below the rank of Assistant Commissioner to be the proper officer for exercising powers under rule 86A based on the following monetary limits as mentioned below:

Total Amount of ineligible or fraudulently availed ITC	Officer to disallow debit of amount from Electronic Credit Ledger under Rule 86A
Not exceeding Rs. 1 Crore	Deputy Commissioner/ Assistant Commissioner
Above Rs. 1 Crore but not exceeding Rs. 5 Crore	Additional Commissioner/Joint Commissioner
Above Rs. 5 Crore	Principal Commissioner/Commissioner

Section 51. Tax deduction at source:

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council

The following persons have been notified:

(a) an authority or a board or any other body, - (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with fifty-one per cent. or more participation by way of equity or control, to carry out any function; 51% point is applicable for both the above points

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(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) Public sector undertakings.

(d) Any registered person receiving supplies of metal scrap from other registered person. Metal scrap can be scrap of iron, steel. copper, Nickel. Aluminium, Lead, Zinc, Tin and other base metals.

TDS is not applicable in case of supply from one PSU to another PSU and also not applicable in case of supply from one person to another person specified in (a), (b) and (c) above.

to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation .-For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in Form GSTR 7.

(3) A certificate of tax deduction at source shall be issued in Form GSTR 7A

(4) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

(5) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

TCS under GST: Section 52:

Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Rate of TCS presently applicable is 0.25% + 0.25% (Under IGST Act, it is 0.5%)

Explanation.–For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

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The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made

Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in Form GSTR 8 within ten days after the end of such month.

Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator

Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the god owns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers,

as may be specified in the notice.

Every operator on whom a notice has been served shall furnish the required information within fifteen working days of the date of service of such notice. Any person who fails to furnish the information required by the notice served shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

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15. IMPORT & EXPORT UNDER GST

Contents

- Understanding the taxability of imports.
- Understanding the provisions to be followed for exports.
- Understanding deemed exports and merchant exporters.
- Understanding all the procedures to be followed in relation to import and export

1. IMPORTS UNDER GST

- ***Article 269A*** constitutionally mandates that supply of goods or services in the course of ***import*** into the territory of India shall be ***deemed to be inter-State supply***.
- Thus, import of goods or services is an inter-State supply subject to IGST.
- Supply of goods or services to a ***Special Economic Zone (SEZ)*** unit/ developer is ***also treated as an inter-State supply*** and thus, is subject to levy of IGST.

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2. IGST ON IMPORTED GOODS

2.1 - Meaning of import of goods

- As per Section 2(10), import of goods with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

2.2 - Applicability of IGST and Customs act

- IGST on goods imported into India is ***levied and collected*** in accordance with the provisions of ***section 3 of the Customs Tariff Act, 1975.***
- Thus, though goods imported into India are leviable to IGST under the IGST Act, the provisions of the ***customs law is used to levy and collect the same***.

2.3 - Taxable value for levy of IGST and GST Compensation Cess

- IGST on the imported goods is ***levied over and above the custom duty*** levied on the imported goods.

Example

Sr. No.	Particulars	Amount

a.	Transaction Value	100
b.	Basic custom duty @ 10% [a x 10%]	10
c.	Social welfare surcharge – 10% of BCD	1
d.	Total (a+b+c)	111
e.	**IGST @ 18% [d x 18%]**	**20**
f.	Total payable [d+e]	131

- If the goods are subjected to anti-dumping duty, safeguard duty or anti-subsidy duty; all such duties will be levied first and then IGST will be levied on the total of these values.
- Thus, IGST leads to cascading effect in imports.
- ***GST Compensation Cess*** may also be leviable on import of ***certain luxury and demerit goods***.
- GST Compensation Cess is levied on the ***same amount on which IGST is levied*** (i.e. on point 'd' of our example above at Rs. 111).

2.4 - Levy and rate of IGST

- IGST on goods imported into India is ***levied and collected*** at the point ***when duties of customs are levied*** on the said goods under the Customs Act.
- Customs duty is leviable when the goods reach the customs barriers and bill of entry for home consumption is filed. Thus, the point of levy and collection of IGST is the point when the ***bill of entry for home consumption is filed***.
- The ***rate of IGST*** shall be same as the rate applicable to the ***like article on its supply of India***.

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2.5 - Place of supply for imports

- As per Section 11 of the IGST Act, the place of supply of goods imported into India is the ***location of the importer***.

3. SUPPLY OF GOODS DEPOSITED IN CUSTOMS WAREHOUSE

3.1 - Mechanism of supply

- The importer is permitted to ***deposit the goods*** in the customs bonded warehouse ***without payment of the duty.***
- For such deposit, '***into-bond' bill of entry*** is filed.
- The importer can ***transfer the ownership of goods*** to any other person during the time when the goods are deposited in the warehouse.
- The person to whom the goods are transferred will ***file ex-bond bill of entry*** for clearing the said goods for home consumption.

3.2 - Applicability of IGST

- The ***supply of warehoused goods*** to any person before clearance for home consumption is ***neither a supply of goods nor a supply of services*** in terms of Schedule III to the CGST Act.

- GST is leviable only when ***ex-bond bill of entry is filed for clearing*** such warehoused goods for home consumption.

3.3 - Value of imported goods for levy of IGST

- The value for computation of IGST shall be ***higher of*** –
  - ***Transaction value*** (Sale value), or
  - Value determined at the time of ***filing into-bond bill of entry*** under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.
- When ***goods are sold more than*** once while being deposited in the warehouse, ***the last transaction value*** is taken as the transaction value for the purpose of determining the value for levying IGST in the manner given above.
- If ***only a part of the goods are sold***, the two values that are to be compared are –
  - transaction value of the goods sold, and
  - proportionate value of the goods sold determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.
- The ***remaining goods which are not sold*** are assessed on the value determined under section 14 of the Customs Act plus basic customs duty and any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

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4. HIGH SEA SALES

4.1 - Meaning of High Sea Sales

- High Sea Sales is ***supply of goods*** by the consignee to any other person by ***endorsement of documents of title to the goods***. Such endorsement takes place ***after the goods have been dispatched*** from the port of origin located outside India ***but before clearance for home consumption.***
- After the high sea sale of the goods, the bill of entry and other documents are ***filed by the person who buys the goods*** from the original importer during the said sale.
- In case the ***goods are sold multiple times*** in high seas, the ***last buyer*** in the chain would be ***required to furnish the entire chain of documents*** such as original invoice, high seas sales contract, details of service charges/commission paid etc. to establish a link between the first contracted price of the goods and the last transaction.

4.2 - Taxability of High Sea Sales

- High sea sales are treated as ***neither supply of goods nor supply of services*** in terms of Schedule III to the CGST Act.

- Thus, IGST is ***not leviable on high sea sales***.
- IGST is leviable only when the goods are cleared from customs for home consumption by the buyer of goods.

4.3 - Value for levy of IGST

- In case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the ***price paid by the last high sea sales buyer who files the bill of entry for home consumption.***

5. THIRD COUNTRY SHIPMENT

5.1 - Meaning of Third Country Shipment

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

  Example –

  Mr. Abhishek, a registered person in India, receives an order to supply goods to Mr. Ross in USA. Mr. Abhishek finds a supplier Mr. Leonard in Singapore and asks him to supply goods to Mr. Ross in USA. The goods are sent directly from Singapore to USA without touching India.

5.2 - Taxability of Third Country Shipment

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- Third party shipment or triangular trade is treated as ***neither as a supply of goods nor a supply of services*** as per Schedule III of CGST Act. Thus, there is no GST liability on such sales.

6. GOODS IMPORTED BY SEZ

- Goods imported by a unit or a developer in the Special Economic Zone (SEZ) ***for authorised operations are exempted from the whole of IGST*** vide Notification No. 64/2017 Cus dated 05.07.2017.

7. GOODS IMPORTED BY EOU

- EOUs are allowed ***duty free import of goods*** i.e. exemption from Custom duties, IGST & GST Compensation Cess under the Notification No. 52/2003 Cus. However, exemption from IGST will be available only till 31.03.2022.

8. GOODS IMPORTED AS BAGGAGE

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

9.1 - Meaning of Import of service

- As per Section 2(11) of the IGST Act, import of services means the supply of any service, where –
  - the ***supplier*** of service is located ***outside India***;
  - the ***recipient*** of service is located ***in India***; and
  - the ***place of supply*** of service is ***in India***.

9.2 - Taxability of Import of service

- To be taxable, the transaction of import of service ***needs to be a 'supply'***.
- As per section 7(1)(b) of the CGST Act, import of services for a consideration whether or not in the course or furtherance of business, is considered as a supply.
- As per provisions contained in Schedule I to the CGST Act, the import of services by a person from a related person or from his establishment located outside India, in the course or furtherance of business is treated as supply even if it is made without any consideration.
- The above points can be summarised as follows –

Related person	Business purpose	Consideration	Supply
Yes	Yes	Yes	Yes
Yes	Yes	No	Yes
Yes	No	No	No
Yes	No	Yes	No
No	Yes	Yes	Yes
No	Yes	No	No
No	No	Yes	Yes
No	No	No	No

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- Thus, in ***case of a related person***, the ***deciding factor is the business purpose*** whereas in ***other cases, the deciding factor is consideration***.

9.3 - Place of supply

- The place of supply is to be determined in terms of ***section 13 of the IGST Act***.
- If the ***place of supply*** of service is ***in the territorial waters***, the place of supply is ***deemed*** to be in ***the coastal State/ Union Territory where the nearest point of the appropriate baseline*** is located.

9.4 - Liability of payment

- In case of import of services, the ***recipient*** of imported services pays ***IGST on reverse charge basis.***

- However, in respect of ***import of*** online information and database access or retrieval ***(OIDAR) services by a non-taxable recipient, the supplier located outside India is responsible*** for payment of IGST.
- In case of importation of ***notified services through E-Commerce Operator (ECO)***, the ***ECO is liable*** to pay IGST.
- In case of services supplied by a person located outside India by way of ***transportation*** of goods by a vessel from a place outside India up to the custom station of clearance in India (ocean freight), ***IGST is to be paid by the importer located in India***.

  Note –
  However, in the case of ***Mohit Minerals (P) Ltd. v. UOI 2020 VIL 36 GUJ*** dated 23.01.2020, the Hon'ble High Court has held that ***no IGST is leviable*** on the ocean freight for the ***services provided by a person located in a non-taxable territory*** by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

  It may be noted that in the instant case, the ***contract of import of goods was on CIF basis***, i.e. the contract for transportation was entered into by the seller (foreign exporter), and not the buyer (importer). Thus, the ***importer was not the recipient of the service of transportation of the goods.***

  Thus, from the above case it can be concluded that ***in CIF shipments, IGST is not leviable*** whereas in ***FOB shipments, IGST is leviable*** and the same shall be paid by the importer located in India.

10. SERVICES PROVIDED BY E-COMMERCE OPERATOR

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- An ***ECO is required to pay IGST*** on notified services if these are supplied through its portal.
- If the ECO ***does not have a physical presence*** in India, IGST shall be ***paid by the representative*** of such ECO supplier.
- However, if the ECO does ***not have a physical presence*** in India ***nor any representative***, it is required to ***appoint a person in India for the purpose of paying tax*** on such notified services.

11. OIDAR SERVICES

11.1 - Meaning of OIDAR services

Online information and database access or retrieval (OIDAR) services means –

- services whose ***delivery is mediated by information technology*** over the internet or an electronic network and
- the nature of which renders their supply ***impossible*** to ensure ***in the absence of information technology***.

It includes electronic services such as –

- advertising on the internet;
- providing cloud services;

- provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- online supplies of digital content (movies, television shows, music and the like);
- digital data storage; and
- online gaming

To know whether a service can be determined as OIDAR service, ***two tests can be done*** –

Test A: The delivery of services is mediated by information technology over the internet/electronic network.

Test B: Services are automated and impossible to ensure in the absence of information technology

If both the tests are passed, a service qualifies as OIDAR service.

Service	Test A qualified?	Test B qualified?	OIDAR service
PDF document manually emailed by provider	Yes	No	No
PDF document automatically emailed by provider' s system	Yes	Yes	Yes
PDF document automatically downloaded from site	Yes	Yes	Yes
Stock photographs available for automatic download	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor	Yes	No	No
Individually commissioned content sent in digital form e.g., photographs, reports, medical results.	Yes	No	No

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Indicative list of OIDAR services –

- Website supply, web-hosting, distance maintenance of programmes and equipment –
    - Website hosting and webpage hosting
    - Automated, online and distance maintenance of programmes
    - Remote systems administration
    - Online data warehousing where specific data is stored and retrieved electronically
    - Online supply of on-demand disc space
- Supply of software and updating thereof –
    - Accessing or downloading software (including procurement / accountancy programmes and anti-virus software) plus updates
    - Software to block banner adverts, otherwise known as Banner blockers
    - Download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
    - Online automated installation of filters on websites
    - Online automated installation of firewalls
- Supply of images, text and information and making available of databases –
    - Accessing or downloading desktop themes

- Accessing or downloading photographic or pictorial images or screensavers
- The digitised content of books and other electronic publications
- Subscription to online newspapers and journals
- Weblogs and website statistics
- Online news, traffic information and weather reports
- Online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular, data such as continually updated stock market data, in real time)
- The provision of advertising space including banner ads on a website/web page
- Use of search engines and internet directories

- Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events –
  - Accessing or downloading of music on to computers and mobile phones
  - Accessing or downloading of jingles, excerpts, ringtones, or other sounds
  - Accessing or downloading of films
  - Downloading of games on to computers and mobile phones
  - Accessing automated online games which are dependent on the internet or other similar electronic networks, where players are geographically remote from one another

11.2 - Importation of OIDAR services by a business entity

- When the OIDAR services is imported by a business entity, such ***entity is liable to pay IGST under reverse charge.***

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11.3 - Importation of OIDAR services by a non-taxable online recipient

- When the OIDAR services is imported by a non-taxable online recipient, the ***supplier who is outside India is liable to pay IGST on the supply.***
- The supplier (or intermediary) of OIDAR services shall ***take a single registration*** under the Simplified Registration Scheme for payment of IGST.
- If the overseas supplier ***has a representative*** in India for any purpose, ***such person*** (representative in India) ***shall get registered and pay IGST*** on behalf of the supplier.
- In case the overseas supplier ***neither has a physical presence nor has any representative*** for any purpose in India, it may ***appoint a person in India*** for the purpose of paying IGST.

Meaning of 'Non-taxable online recipient'

Non-taxable online recipient means *any unregistered person receiving online information and database access or retrieval services located in taxable territory.*

11.4 - Provision or facilitation of OIDAR services by intermediary located outside India

- If an ***intermediary located outside India*** arranges or facilitates supply of such service to a non-taxable online recipient in India, ***the intermediary would be treated as the supplier*** of the said service who must get registered in India and pay IGST on the supply.

- However, the ***responsibility will be of the supplier*** and not the intermediary if his ***invoice clearly identifies the service*** and its supplier the ***intermediary has nothing to do with*** –
    - the payment or
    - authorising the delivery of the service or
    - setting of the terms and conditions of the supply.

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

12.1 - Registration

- ***General threshold limits shall apply*** to the importers (except those who are liable to pay tax under reverse charge) and they are not required to get compulsory registration.
- However, if an ***importer is registered*** under GST, it is mandatory for him to ***quote GSTIN in the bill of entry*** for the purpose of payment of IGST on import of goods as also for availing ITC of such IGST.
- If an importer is ***liable to pay IGST under reverse charge mechanism***, the ***registration shall be mandatory*** irrespective of the turnover.
- Thus, ***importer of services*** who are required to pay IGST under reverse charge have to ***obtain compulsory registration*** under GST law so as to be able to pay tax on imported services under reverse charge.
- Also, the recipient of imported services other than non-taxable online recipient must register compulsorily.

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12.2 - Input Tax Credit

- The ITC is available for the IGST and GST Compensation Cess paid on the import of goods.
- Also, IGST paid under reverse charge mechanism on import of service is available as ITC.

13. EXPORT

- Export of goods or services are treated as ***inter-State supply***.
- Export of goods or services are categorised under ***zero-rated supply.***

13.1 - Meaning of Export of goods

As per Section 2(5) of the IGST Act, 'Export of goods' with its grammatical variations and cognate expressions, means ***taking goods out of India to a place outside India***.

13.2 - Meaning of 'India'

- As per Section 2(56) of the CGST Act, India means –
    - the territory of India as referred to in article 1 of the Constitution,
    - its territorial waters i.e. 12 nautical miles from the baseline,
    - seabed and sub-soil underlying such waters,
    - continental shelf,

- exclusive economic zone or
- any other maritime zone i.e. 200 nautical miles from the coastal baseline, and
- the air space above its territory and territorial waters.

- Thus, in order to qualify as exports under GST, the goods must travel beyond 200 nautical miles from the baseline of India.

13.3 - Goods sent out of India for exhibition / export promotion

- Circular No. 108/27/2019 GST dated 18.07.2019 has clarified that the activity of sending/ taking goods out of India for exhibition or on consignment basis for export promotion ***does not constitute supply*** as there is ***no consideration at that point in time***.

- Since such activity is not a 'supply', the same ***cannot be considered as 'zero rated supply'***.

14. ZERO RATED SUPPLY

14.1 - Meaning of zero-rated supply

- Zero rated supply means any of the following supplies of goods or services–
  - ***export*** of goods or services or both; or
  - supply of goods or services or both to a Special Economic ***Zone*** developer or a Special Economic Zone unit.

Note –

Circular No. 48/22/2018 GST dated 14.06.2018 has clarified that when a ***supply*** of goods or services has been made ***to an SEZ unit / developer***, the same shall be classified as zero rated ***only if the same is made for authorized operations***. An endorsement to this effect shall have to be issued by the specified officer of the Zone. Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ unit/developer for authorized operations, as endorsed by the specified officer of the Zone, the benefit of zero-rated supply shall be available in such cases to the supplier.

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14.2 - Provisions governing zero rated supply

A registered person making zero rated supply shall be ***eligible to claim refund*** under either of the following options –

- Supply of goods or services or both under ***bond or Letter of Undertaking*** –
  - Under this method supply is made ***without payment of IGST*** and
  - ***refund*** is claimed of ***unutilised input tax credit.***
- Supply of goods or services or both on ***payment of IGST*** and claim ***refund of such tax paid*** on goods or services or both supplied.

Note –

1. It is important to note that the ***credit of ITC is available*** even when the ***outward supply is an exempt supply.***

2. The above provisions are ***applicable to GST Compensation cess*** in the same manner as they are applicable to IGST [Circular No. 01/ 2017 CC dated 26.07.2017].

15. PROCEDURE FOR EXPORT UNDER BOND/ LUT

15.1 - Procedure followed

- Exporter has to ***execute the bond or LUT prior to export*** binding himself to pay the tax due along with interest @ 18%.
- Such tax and interest shall be ***paid within 15 days after the expiry of 3 months*** or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, ***if the goods are not exported*** out of India.
- In case of export of service, such tax and interest shall be paid ***within 15 days after the expiry of 1 year*** or such further period as may be allowed by the Commissioner, from the ***date of issue of invoice for export***, if the ***payment for such services is not received*** by the exporter in convertible foreign exchange or in India rupees, wherever permitted by the RBI.
- ***Failure to export goods and pay*** the tax due along with interest within the period specified above results in ***withdrawal of the facility of export without payment of IGST*** and recovery of the said amount under section 79 of the CGST Act.
- The facility, however, can be ***restored on payment of the said amount*** [Notification No. 37/2017 CT dated 04.10.2017].
- All registered persons are ***eligible to furnish a LUT*** in place of a bond except those who have been ***prosecuted for cases*** involving an ***amount exceeding Rs. 250 lakhs*** [Notification No. 37/2017 CT dated 04.10.2017].
- The ***details of the export invoices*** should be ***submitted in GSTR-1.***
- These details shall be ***electronically transmitted to the system designated by Customs*** and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

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15.2- Other relevant points

1. ***Validity of LUT –***

The LUT shall be valid for the ***whole financial year*** in which it is tendered.

2. ***Form for bond or LUT –***

The registered person (exporter) shall fill the relevant form on the common portal.

3. ***Documents for LUT –***

No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

4. ***Acceptance of LUT or bond –***

A LUT shall be deemed to have been ***accepted*** as soon as an ***acknowledgement*** for the same, ***bearing the Application Reference Number (ARN), is generated online.***

If it is discovered that an exporter whose LUT has been so accepted, was ***ineligible to furnish a LUT*** in place of bond, then the ***exporter's LUT will be liable for rejection***. In case of rejection, the LUT shall be deemed to have been rejected ab initio.

5. ***Bank guarantee –***

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

6. ***Clarification regarding running bond –***

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

7. ***Sealing by officers –***

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

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8. ***Realization of export proceeds in Indian Rupee –***

Para A(v) Part-I of RBI Master Circular No. 14/2015-16, dated 1st July, 2015 (updated as on 5th November, 2015) states that –

- there is ***no restriction on invoicing of export contracts in Indian Rupees*** in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999.
- Further, all export contracts and invoices shall be ***denominated either in freely convertible currency or Indian rupees*** but export proceeds shall be realized in freely convertible currency.
- However, export proceeds against specific exports may also be realized in rupees, provided it is through a ***freely convertible Vostro account*** of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan".
- Further, section 2(6) of the IGST Act, 2017 allows realization of export proceeds of services in INR, wherever allowed by the RBI.

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

- Clarification - When the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by Authorised Dealer (AD) banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of section 2(6) of the IGST Act, 2017. ***[Circular No. 202/14/2023 GST dated 27.10.2023]***

9. ***Jurisdictional officer –***

- The LUT/Bond shall be accepted by the ***Jurisdictional Deputy/Assistant Commissioner*** having jurisdiction over the principal place of business of the exporter.

- The exporter is at ***liberty*** to furnish the LUT/bond before ***either the Central Tax Authority or the State Tax Authority*** till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

16. DIFFERENCE BETWEEN EXEMPT SUPPLY AND ZERO RATED SUPPLY

Basis	***Exempt supply***	***Zero rated supply***
Meaning	Exempt supply means supply of any goods or services or both which **attracts nil rate of tax** or which may be **wholly exempt from tax** and includes **non-taxable supply**.	Zero-rated supply covers **export** of goods and/ or services or supply of goods and/or services **to SEZ unit/SEZ developer**.
Input Tax Credit	ITC **cannot be claimed** if the outward supply is exempt.	ITC **can be claimed** even if the outward supply is exempt supply.
Need for registration	A person who is **engaged exclusively** in the business of supplying goods or services or both that are **not liable to tax or wholly exempt** from tax under the CGST or IGST Act shall **not be liable to registration**.	A person exclusively making zero rated supplies **needs to register for claiming the refund** of unutilized ITC or IGST paid.
Document	A registered person supplying exempted goods and/or services shall **issue a bill supply** instead of a tax invoice.	Normal **tax invoice** is issued for zero rated supplies.

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17. EXPORT TO NEPAL AND BHUTAN

17.1 - Export of goods

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

17.2 - Export of services

- In case of export of services, wherever permitted by the Reserve Bank of India, ***receipt of payment in Indian rupees is allowed*** in terms of section 2(6).
- As stated earlier, the ***RBI regulations allow receipt of payment in Indian rupees*** in case of exports to Nepal and Bhutan.
- Consequently, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees is ***considered as export of services*** subject to fulfillment of other conditions.
- Therefore, exports of both goods and services to Nepal and Bhutan are treated as 'normal exports', i.e. goods and services can be exported to Nepal and Bhutan under LUT.

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18. DEEMED EXPORT

18.1 - Meaning of Deemed export

- As per ***Section 147*** of CGST Act read with Notification No. 48/2017 CT dated 18.10.2017 and 50/2017 Cus dated 30.06.2017, the below mentioned ***supply of goods*** shall be categorised as deemed exports –
    - Supply of goods by a registered person ***against Advance Authorisation (AA).***
    - Supply of ***capital goods*** by a registered person ***against Export Promotion Capital Goods Authorisation (EPCG)***.
    - Supply of ***goods*** by a registered person to ***Export Oriented Unit (EOU)***.
    - Supply of ***gold*** by a ***bank or Public sector Undertaking against AA***.

18.2 - Other provisions

- Supplies referred as deemed exports ***do not leave India***.
- The ***payment*** is received either in ***Indian rupees or in convertible foreign exchange***.
- Deemed exports are ***not zero-rated supplies***, hence, all supplies notified as supply for deemed export are ***subject to levy of taxes***.
- However, the ***refund of tax paid on the supply*** regarded as deemed export is ***admissible to either the supplier or the recipient***.

19.1 - Meaning of merchant exporter

Merchant exporter is a person engaged in ***trading of goods*** and such goods are ***intended to be exported.***

Example –
Mr. A is a trader of chocolates. He purchases the chocolates and supply it to Mr. B who exports the same. In this case, Mr. A is a merchant exporter.

19.2 - Benefits available to merchant exporter

- A ***concessional rate of 0.1% IGST*** (for inter-state supply) and 0.05% CGST and SGST (for intra-state supply) is available in this case irrespective of the rate of tax on the goods.
- The ***exporter*** receiving goods at concessional rate of tax will be ***eligible to take credit*** of the concessional tax so paid by him.
- The ***supplier*** who supplies goods at the concessional rate will be ***eligible for refund of ITC*** on account of inverted tax structure.
- However, it may be noted that the ***exporter*** of such goods can ***export the goods only under LUT / bond*** and cannot export on payment of IGST.

19.3 - Conditions to be fulfilled

For supply of goods at the concessional rate, the following conditions has to be fulfilled –

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- the registered supplier (manufacturer) shall supply the goods to the registered recipient (merchant exporter) on a ***tax invoice***;
- the registered recipient shall ***export the said goods*** within a ***period of 90 days from the date of issue of a tax invoice*** by the registered supplier;
- the registered recipient shall ***indicate the GSTIN*** of the registered supplier and the ***tax invoice number*** issued by the registered supplier in respect of the said goods ***in the shipping bill or bill of export;***
- the ***registered recipient*** shall be ***registered with an Export Promotion Council***;
- the registered recipient shall ***place an order*** on registered supplier ***for procuring goods at concessional rate*** and a ***copy*** of the same shall also be ***provided to the jurisdictional tax officer*** of the registered supplier;
- the registered recipient shall ***move the said goods*** from place of registered supplier –
    - directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
    - directly to a registered principal place of business or registered additional place of business from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- if the registered recipient intends to ***aggregate supplies from multiple registered suppliers and then export***, the ***goods*** from each registered supplier shall ***move to a registered principal***

place of business or registered additional place of business and after aggregation, the registered recipient shall move goods to the Port, Inland Container Deport, Airport or Land Customs Station from where they shall be exported;

- in the above case, the registered recipient shall ***endorse receipt of goods*** on the tax invoice and also ***obtain acknowledgement of receipt of goods***;
- the endorsed tax invoice and the acknowledgment shall be ***provided*** to the ***registered supplier*** as well as to the ***jurisdictional tax officer*** of such supplier; and
- after goods have been exported, the registered recipient shall ***provide copy of shipping bill or bill of export containing details of GSTIN*** and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed, t***o the registered supplier as well as jurisdictional tax officer of such supplier.***
- However, merchant exporters may ***exclude commercially sensitive information*** while providing copies of shipping bills to registered suppliers.

20. EXPORT OF SERVICES

As per Section 2(6) of IGST Act, supply of service qualifies to be an 'export of service' if it fulfils the following conditions –

- the service is supplied ***from India*** to a ***recipient located outside India***,
- the ***place of supply*** of the service ***is outside India***,
- the ***consideration*** for the service is received in ***freely convertible foreign exchange or in Indian rupees*** wherever permitted by the Reserve Bank of India, and
- the ***transaction is between separate entities***, i.e. not merely between two establishments of an entity

Example –

When a service is ***provided by the Head office located in India to its branch located outside India***, the same shall ***not qualify as export of service as the head office and branch belongs to one taxable person only.***

However, if the ***service had been supplied to the subsidiary*** located outside India, the same can be ***covered under the definition of export of service***.

21. SUB-CONTRACTING OF SERVICES BY AN EXPORTER OF SERVICES

Circular No. 78/52/2018 GST dated 31.12.2018 contains a special point in which an ***exporter of services outsources a portion*** of the service contract ***to another person located outside India***.

For the ease of understanding, we will understand this case with the help of an example –

Let us assume that Mr. Ravi of India has been asked to provide the service of accounts and taxation to Mr. Shrey of USA for a consideration of Rs. 10 lakhs.

Mr. Ravi asked his friend Mr. Colby of Canada to provide the accounting service amounting to Rs. 4 lakhs. In this case, the tax treatment will be done in the manner explained below –

Here, ***two supplies*** have taken place –

- ***Supply of services from the exporter of services*** (i.e. Mr. Ravi) located in India ***to the recipient*** of services (i.e. Mr. Shrey) located outside India ***for the full contact value*** (i.e. Rs. 10 lakhs);
- ***Import of services*** by Mr. Ravi from the supplier of services located outside India (i.e. Mr. Colby) ***with respect to the outsourced portion of the contract*** (i.e. Rs. 4 lakhs).

Here, the export of service will be zero rated supply and the import of service from Mr. Colby will be ***liable to IGST on reverse charge basis*** and Mr. Ravi would be ***eligible for taking ITC*** of the IGST so paid.

Thus, even if full consideration of Rs. 10 lakhs is not received in convertible foreign exchange in India due to the fact that the Mr. Shrey has directly paid Rs. 4 lakhs to Mr. Colby, the same shall ***also be treated as receipt of consideration for export of services*** provided that –

- ***IGST has been paid*** by Mr. Ravi for import of services on that portion of the services which has been directly provided by the supplier located outside India; and
- ***RBI*** by general instruction or by specific approval ***has allowed*** that part of the consideration for such exports can be ***retained outside India***.

22. SUPPLY FROM A COMPANY INCORPORATED IN INDIA TO ITS RELATED ESTABLISHMENTS OUTSIDE INDIA, WHICH ARE INCORPORATED UNDER THE LAWS OUTSIDE INDIA

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

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

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

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

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

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

From the perusal of the definition of "person" under section 2(84) of the CGST Act and the definitions of "company" and "foreign company" under section 2 of the Companies Act, 2013, it is observed that ***a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities.***

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

In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under the Companies Act, are separate persons under the CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".

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

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

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

Illustration 1(Questions – I)

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

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

Illustration 2 (Questions – I)

A Ltd enters into an agreement for sale of goods with B Ltd, a company based in UAE. B Ltd requires the goods to be delivered by A Ltd, to C Ltd., a company based in Karnataka

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

Illustration 3(Questions – II)

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

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16. RETURNS

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- Statement of outward supplies [Sec 37]
- Furnishing of returns [Sec 39]
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- Annual return [Sec 44]
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- Levy of late fee [Sec 47]
- GST Practitioners [Sec 48]

1. INTRODUCTION

- The term "return" ordinarily means
  - statement of information (facts)
  - furnished by the taxpayer,
  - to tax administrators,
  - at regular intervals.

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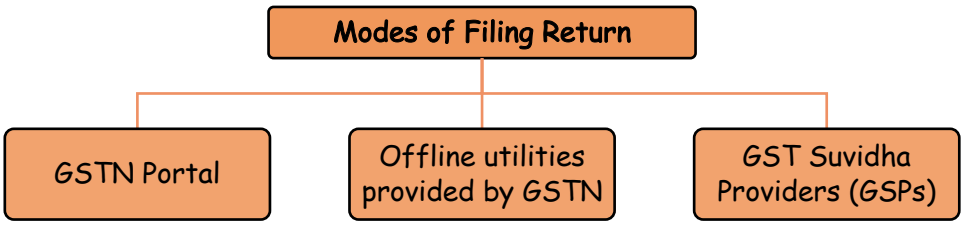
Return [Section 2(97) *– means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder*

- The information to be furnished in the return generally comprises of the details pertaining to the nature of activities/business operations forming the subject matter of taxation; the measure of taxation such as sale price, turnover, or value; deductions and exemptions; and determination and discharge of tax liability for a given period.
- It ***enables the Government/*** tax administrator ***to estimate the tax collection*** for a particular period and ***determine the correctness of the tax compliance*** of the taxpayers.
- Filing of GST returns helps in determination of tax liability of the return filer and at the same time it also has a huge bearing on ***determination of tax liability of other persons with whom the former has entered into taxable activities***.
- The taxpayer is required to furnish the return in a ***specific statutory format***. These formats are, therefore, designed to take care of all the provisions of the law that have a bearing on computation of tax liability of a taxpayer.
- ***All the returns are to be filed online.***

- Taxpayers can file the statements and returns by various modes.
    - Firstly, they can file their statement and returns directly on the GST common portal online. However, this may be tedious and time consuming for taxpayers with large number of invoices.
    - For such taxpayers, offline utilities have been provided by GSTN that can be used for preparing the statements offline after downloading the auto populated details and uploading them on the common portal.
    - GSTN has also developed an ecosystem of GST Suvidha Providers (GSP) that will integrate with the common portal. GSPs are third party service providers who develop applications for return filing.



- Under GST laws, a taxpayer is required to estimate his tax liability on "***self- assessment" basis and deposit the tax amount*** along with the filing of such return.
- Details of whether the supply is ***B2B or B2C*** plus whether the supply is ***intra-State or inter-State*** has to be stated separately in the return.

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B2B

B2B means Business to business transactions.

In such type of transactions, the recipient is also a registered supplier and hence takes ITC.

B2C

B2C means Business to consumer transactions.

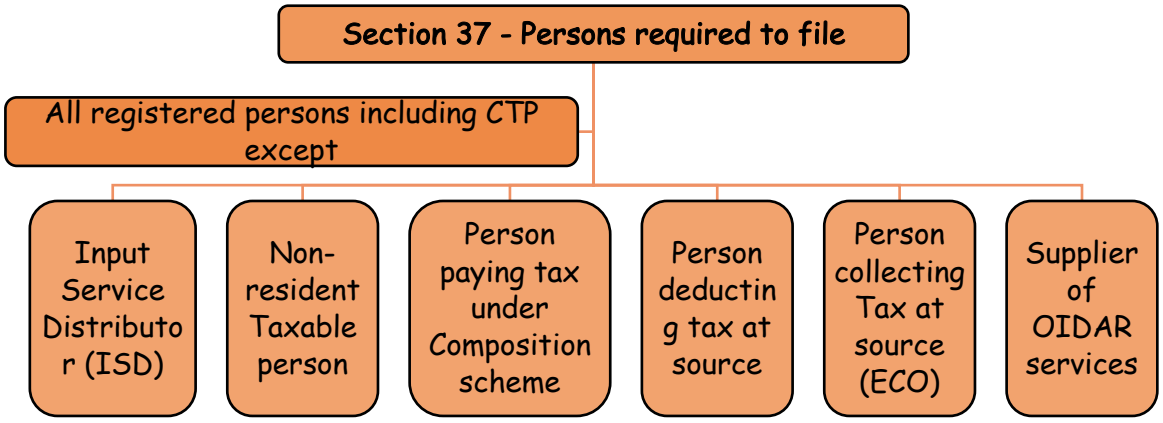
In such type of transactions, the recipient is consumer or unregistered and hence, will not take or cannot take ITC.

- Invoice wise details needs to be given for B2B supplies whereas consolidated details are given for B2C supplies.
- The return filing process is under review and is yet not finalized. The exact mechanism of the return filing process would be available only after the relevant notifications are issued by the Government. Therefore, in this chapter only those provisions which are currently effective, have been discussed.
- A simplified monthly return in Form GSTR 3B (summary return) was introduced in July, 2017 to help businesses to file returns easily. This is continuing.
- Statement of details of outward supplies in given Form GSTR-1

- The GST Council also recommended to postpone the date of filing of Forms GSTR-2 (details of inward supplies) and GSTR-3 (monthly return) for all normal taxpayers, irrespective of turnover, till further announcements were made in this regard.
- Sec 41 (dealing with claiming of ITC and provisional acceptance of it), Sec 42 (dealing with Matching and reversal of ITC) and Sec 43 (dealing with matching and reversal of output tax liability) has become inoperative.

2. STATEMENT OF OUTWARD SUPPLIES - SECTION 37 READ WITH RULE 59 OF CGST RULES

2.1 - Who is required to file



2.2 - Form for submission of details of outward supplies

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- The details of outward supplies are required to be furnished, electronically, in Form GSTR-1.
- Such details can be furnished through the common portal, either directly or from a Facilitation Centre notified by the Commissioner.
- Further, a Nil GSTR-1 can be filed through an SMS using the registered mobile number of the taxpayer
- GSTR-1 once filed cannot be revised. However, it can be amended in the subsequent return.

2.3 - Due date of submission of GSTR-1

Tax Period [Section 2(106) *– means the period for which the return is required to be furnished.*

2.3.1 - General taxpayers

- GSTR-1 for a particular month is filed ***on or before the 11th day of the immediately succeeding month***.
- The due date of filing GSTR-1 ***may be extended by the Commissioner/ Commissioner of State GST/ Commissioner of UTGST*** for a class of taxable persons by way of a notification.
- The due date was extended from 10th day to 11th day of the succeeding month from the period October'20 to March'21 by CBIC through notification.

- Henceforth, the due date for GSTR 1 shall be 11th of next month.

2.3.2 - Exceptions to General rule

- A taxpayer cannot file GSTR-1 before the end of the current tax period.
- However, following are the exceptions to this rule:
  a) Casual taxpayers, after the closure of their business
  b) Cancellation of GSTIN of a normal taxpayer
- A taxpayer who has applied for cancellation of registration will be allowed to file GSTR-1 after confirming receipt of the application.

2.4 - Cases wherein a registered person is debarred from furnishing details of outward supplies in GSTR-1/IFF? - Section 37(4) read with rule 59(6)

- ***Non QRMP person***: if he has not furnished the return in GSTR-3B for the preceding month;
- ***QRMP person NO GSTR1/IFF***: if he has not furnished the return in GSTR-3B for preceding tax period;
- ***Registered Person served intimation under Rule 88C***: unless he has either deposited the amount specified in the intimation or furnishes a reply explaining the reasons for any amount remaining unpaid.
- ***Registered Person served intimation under Rule 88D***: unless he has either paid the amount equal to the excess ITC as specified in the said intimation or has furnished a reply explaining the reasons.
- If Registered Person has not furnished the details of the bank account as per the provisions of rule 10A.

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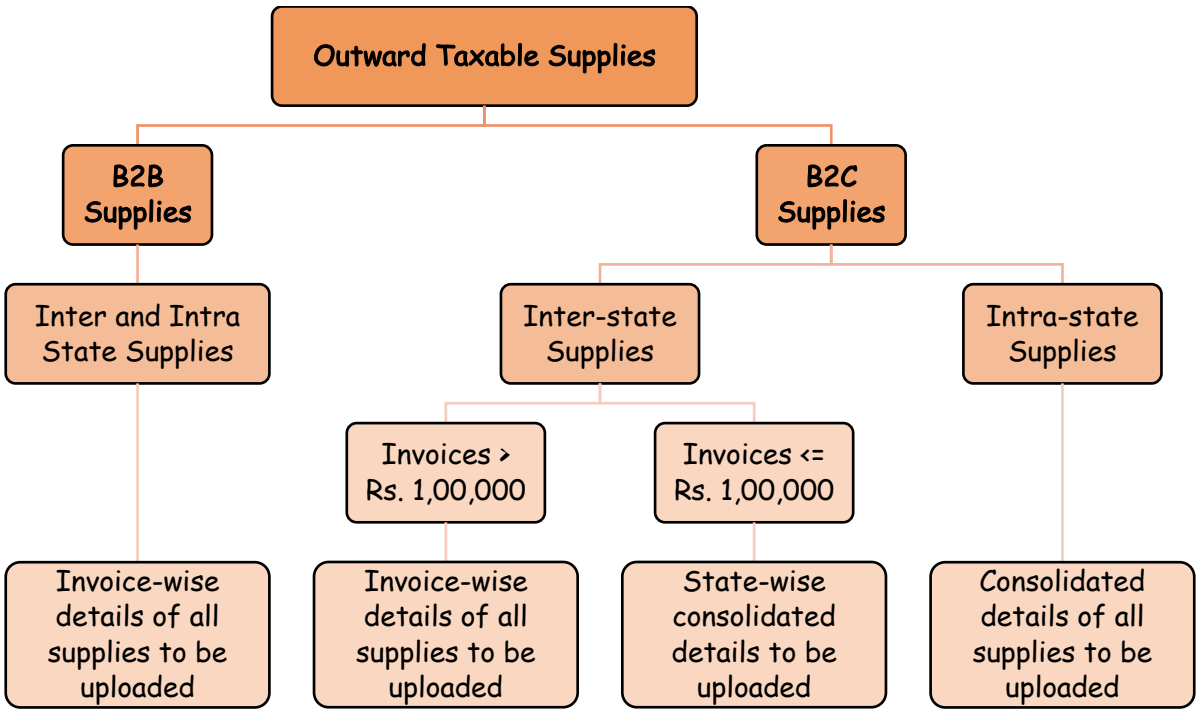
2.5 - Details of outward supplies that are required to be furnished in GSTR-1

- The registered person is required to furnish details of invoices and revised invoices issued in relation to supplies made to registered and unregistered persons during a month and debit notes and credit notes in GSTR-1.
- ***Invoice-wise details of have to be given for***
  - Inter-State and Intra-State supplies made to registered persons
  - Inter-State supplies made to unregistered persons with invoice value exceeding Rs. 1,00,000
- ***Consolidated details of all invoices have to be given for***
  - Intra-State supplies made to unregistered persons for each rate of tax
  - Inter-State supplies made to unregistered persons with invoice value up to Rs.1,00,000 for each rate of tax separately for each State.
- ***Debit and credit notes Issued*** during the month for invoices issued previously.

- Invoices can be ***uploaded any time during the tax period*** and not just at the time of filing of GSTR-1.



- Invoices can be ***modified/deleted any number of times*** till the submission of GSTR-1 of a tax period. The uploaded invoice details are in a draft version till the GSTR-1 is submitted.
- Scanned copies of invoices are not required to be uploaded. Only certain prescribed fields of information from invoices need to be uploaded e.g., invoice no., date, value, taxable value, rate of tax, amount of tax etc.

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- In case there is no consideration, but the activity is a supply by virtue of Schedule 1 of CGST Act, the taxable value will have to be worked out as prescribed and uploaded.
- Description of each item in the invoice need not be uploaded. Only HSN (Harmonized System of Nomenclature) code in respect of supply of goods and accounting code in respect of supply of services need to be fed.
- HSN or HS (Harmonized Commodity Description and Coding System) is a standardized system of nomenclature of different goods developed by World Customs Organization, which is accepted globally. HSN uses 6-digits uniform codes to classify different goods. India uses eight-digits codes for more specific and precise classification.

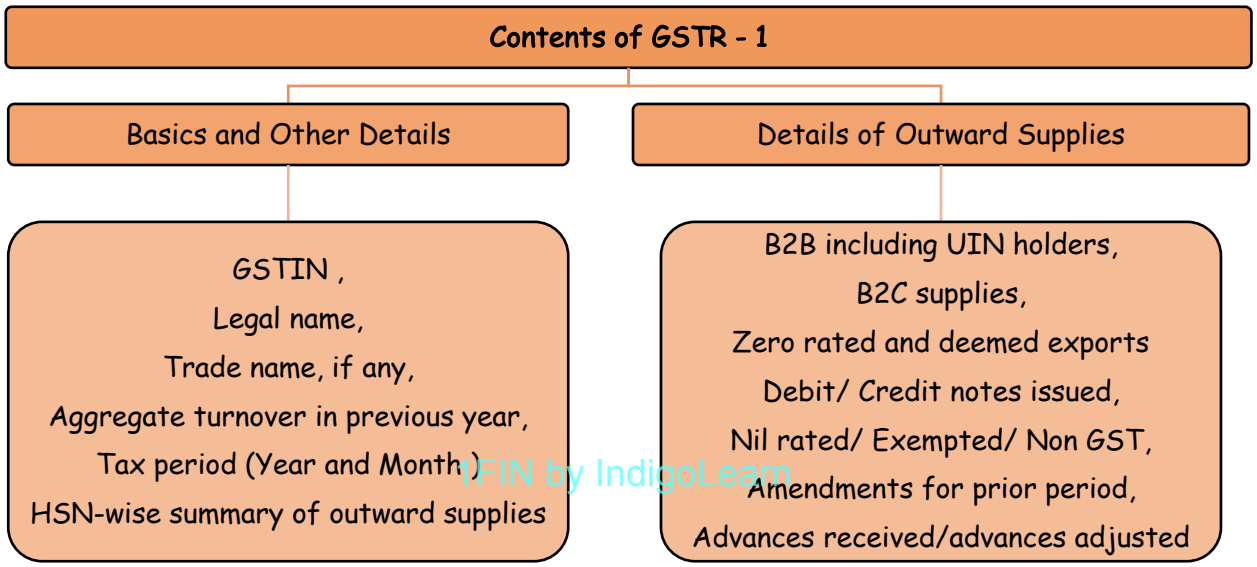
2.6 - Contents of GSTR-1

- GST is a destination-based consumption tax. Hence, the tax revenue is transferred to the State which is the place of supply of the particular transaction.

- Since, the ***place of supply is crucial*** for determining the share of every State in the tax revenue, GSTR-1 captures information relating to place of supply for both B2B and B2C supplies.
- GSTR-1 consists of the basic details regarding the business and details of outward supplies.

2.7 - Communication of details of GSTR-1 to the recipient of supply

- The details of outward supplies for a month furnished by the supplier are communicated and made available electronically to the respective recipient(s)
- It is ***auto populated in Part A of Form GSTR – 2A and GSTR 2B*** through the common portal after the due date of filing of GSTR - 1.



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- This helps the recipient to cross check his ITC from various vendors.

2.8 - Amendment of details of outward supply furnished in prior periods

- ***Particulars furnished in GSTR-1 of prior periods can be amended by way of Amendment Tables given in GSTR-1 of subsequent periods*** (or) he can file GSTR 1A before filing GSTR 3B. This allows him to add any particulars of the current tax period missed out in reporting in Form GSTR-1 of current tax period or amend any particulars already declared in Form GSTR-1 of current tax period
- The details of original debit notes/ credit notes / refund vouchers issued by the tax- payer in the current tax period as also the revision in the debit notes/ credit notes / refund vouchers issued in the earlier tax periods are required to be shown in amendment table.
- The suppler is also required to give details of original invoice (No and Date), the particulars of which have been wrongly entered in GSTR-1 of the earlier months and are now sought to be amended.
- If a supplier altogether forgets to include the entire original invoice while furnishing the GSTR-1 for a particular month, in such cases also, he would be required to show the details

of the said missing invoice which was issued in earlier month in the Amendment Table only, as such type of errors would also be regarded as data entry error.

- If the supplier discovers any error or omission, he shall rectify the same in the tax period during which such error or omission is noticed and pay the tax and interest, if any, in case there is short payment, in the return to be furnished for such tax period.
- The ***maximum time limit within which such amendments are permissible is earlier of*** the following dates:
    - 30th November following the end of Financial Year or
    - Date of filing of the relevant annual return.

2.9 - Nil return and other details

- If there is ***no business activity in any particular tax period***, then for such tax period(s), ***a Nil GSTR-1*** is required to be filed by all normal and casual taxpayers.
- ***A Nil GSTR-1 does not have any entry.***
- Thus, a Nil GSTR-1 for a tax period cannot be filed, if the taxpayer has made any outward supply (including exempt, nil rated or non-GST supplies), or it has received supplies on which tax is payable under reverse charge or an amendment needs to be made to any of the supplies declared in an earlier return or any credit or debit notes is to be declared / amended etc.
- A Nil GSTR-1 can be ***filed through an SMS*** using the registered mobile number of the taxpayer. GSTR-1 submitted through SMS is verified by registered mobile number-based OTP facility.

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- Taxpayer opting for ***voluntary cancellation*** of GSTIN has to file ***GSTR-1 for active period***.
- In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer, GSTR-1 will be available for filing only for the period during which the taxpayer was registered as normal taxpayer.
- The GSTR-1 for the said period, even if filed with delay would accept invoices for the period prior to conversion.
- ***All the above provisions apply to Nil GSTR - 3B and Nil GST - CMP – 08***
- ***GSTR – 1 Due Dates***

Registered persons opting for QRMP	**13th day** of the month succeeding such tax period
Others	11th day of the month succeeding such tax period

3. QUARTERLY RETURN MONTHLY PAYMENT (QRMP) SCHEME

- Quarterly return monthly payment – Optional scheme for those whose turnover does not exceed Rs. 5 crore in the preceding FY.

- A registered person intending to opt for QRMP scheme for any quarter shall indicate his preference for furnishing of return on a quarterly basis from 1st day of the 2nd month of the preceding quarter till the last day of the 1st month of the quarter for which the option is being exercised
- However, there is ***Invoice Furnishing Facility (IFF)***. It is a facility where such registered persons, for each of the first and second months of a quarter, can furnish the details of such ***outward supplies to a registered person, as he may consider necessary***, between the 1st day of the succeeding month till the 13th day of the succeeding month.
- The said details of outward supplies shall, however, ***not exceed the value of rupees fifty lakh rupees in each month***. (Circular No. 143/13/2020- GST)
- The invoices furnished in IFF shall be reflected in FORM GSTR-2B of the concerned recipient of the relevant month of the quarter and remaining invoices furnished in FORM GSTR-1 shall be reflected in FORM GSTR-2B of the concerned recipient of the last month of the quarter.
- The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1
- The taxpayer has to deposit tax using form GST PMT-06 by the 25th of the following month, for the invoices reported in IFF
- The taxpayers can pay their monthly tax liability either in The Fixed Sum Method (FSM), also popular as 35% challan method, or Self-Assessment Method (SAM).
- The taxpayer must pay an amount of tax mentioned in a pre-filled challan in the form GST PMT-06 for an amount equal to 35% of the tax paid in cash.

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S. No.	Type of Taxpayer	Tax to be paid
1.	Who furnished GSTR-3B quarterly for the last quarter	35% of tax paid in cash in the preceding quarter
2.	Who furnished GSTR-3B monthly during the last quarter	100% of tax paid in cash in the last month of the immediately preceding quarter

Self - Assessment Method:

In Self-Assessment Method, the registered person can also pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, for every month. The taxpayer has to manually arrive at the tax liability for the month and has to pay the same in FORM GST PMT-06.

QRMP - GSTR 3B – Due dates:

Principal Place of Business of the Registered persons	Due Date
Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Union territories of Daman & Diu & Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	22nd day of the month succeeding such quarter

Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	24th day of the month succeeding such quarter

4. FIRST RETURN – SECTION

- When a person becomes liable to registration after his ***turnover crosses the threshold limit,*** he may ***apply for registration within 30 days*** of so becoming liable. Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate.
- During the ***intervening period***, such person might have made the outward supplies. Sec 30(3) provides that the registered person may ***issue revised tax invoices against the invoices already issued*** during said period ***within 1 month*** from the date of issuance of certificate of registration.
- ***Section 40*** provides that registered person shall declare his outward supplies made during said period in the first return furnished by him after grant of registration.
- The ***format*** for this return is the ***same as that for regular return***.
- Thus, the first return would consist of:
    - Details of outward supplies, after becoming liable to registration but before grant of the certificate of registration.
    - Details of outward supplies made in first tax period after grant of the certificate of registration.

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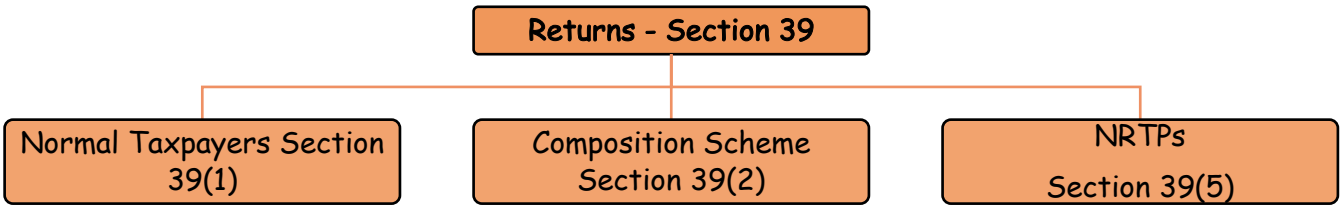
5. FURNISHING OF RETURNS - SECTION 39

- This section provides for different returns to be furnished by normal taxpayers, taxpayers under composition scheme and NRTPs.



5.1 - Return to be furnished by Normal taxpayers - Section 39(1)

5.1.1 - Who has to file

- Every registered person has to file a monthly return called GSTR-3B except
    1. An input service distributor or
    2. A non-resident taxable person or
    3. A composition taxpayer,
    4. A person deducting tax at source,

5. A person collecting tax at source, i.e. an electronic commerce operator and
6. A supplier of OIDAR services located in non-taxable territory providing such services to non- taxable online recipient.

5.1.2 - GSTR-3B

- Initially, return in Form GSTR-3 was notified as the return under section 39(1) which was to be filed by 20th day of the month succeeding the relevant calendar month or part thereof. ***However, GSTR-3 never became practically applicable*** as the filing thereof has been deferred by the GST Council since the introduction of GST law.
- Therefore, in lieu of return in Form GSTR-3, ***return in Form GSTR-3B has been notified as the monthly return*** under section 39(1).
- GSTR-3B is a simple return containing ***summary*** of
  - outward supplies,
  - inward supplies liable to reverse charge,
  - eligible ITC,
  - payment of tax etc.

Thus, GSTR- 3B ***does not require invoice-wise data of outward supplies***.

- GSTR-3B can be submitted ***electronically through the common portal***, either directly or through a ***Facilitation Centre*** notified by the Commissioner.
- If there is no business activity in any particular tax period, then for such tax period(s), a Nil GSTR-3B is required to be filed.

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- A ***Nil GSTR-3B can be filed through an SMS*** using the registered mobile number of the taxpayer.

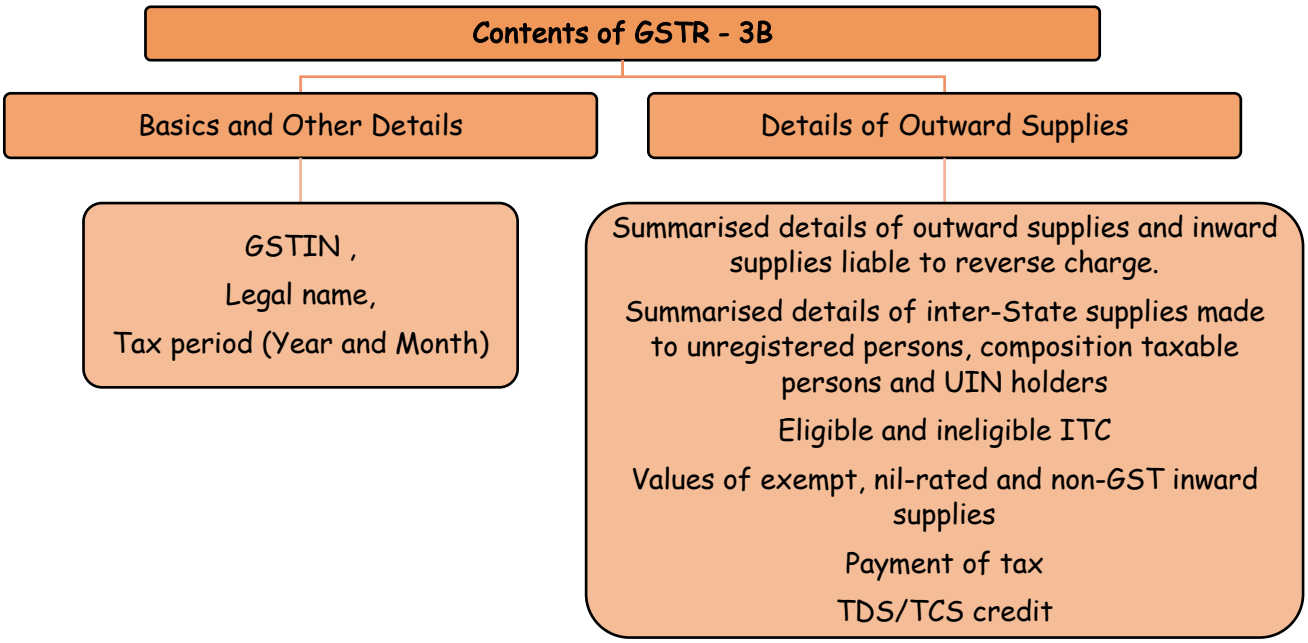
5.1.3 - Due date of filing

- The ***due date of submission*** for GSTR-3B is being notified as ***20th day of the month succeeding the relevant month.***
- The due date of payment of tax in respect of such period is also 20th day of the succeeding month. Thus, the due date of payment of tax is linked to the due date of filing of return.
- Government has introduced staggered filing of GSTR-3B returns as a ***temporary measure*** to de-stress the GST return filing system.

Taxpayers	*Last date of filing of GSTR 3B*
Having Annual turnover >= Rs. 5 crores in the previous financial year	20th of the subsequent month
Having annual turnover below Rs. 5 crores in previous financial year	22nd or 24th of the subsequent month depending upon the State or Union Territory in which they are registered.

- Presently, the staggered filing has been provided for tax periods till March 2021.

5.1.4 – Contents of GSTR – 3B



5.1.5 - Other key points

- A return furnished under section 39(1) on which self- assessed tax has been paid in full is considered as a valid return.

> ***Valid return [Sec 2(117)]*** *- means a return furnished under section 39(1) on which self-assessed tax has been paid in full.*
> 1FIN by IndigoLearn

- ***Filing of returns for current month is possible only when returns of the previous month have been filed.***
- A taxpayer needs to electronically sign the submitted returns otherwise it will be considered not-filed.
- Taxpayers can electronically sign their returns using a DSC (mandatory for all types of companies and LLPs), E-sign (Aadhaar-based OTP verification), or EVC (Electronic Verification Code sent to the registered mobile number of the authorized signatory).

5.2 - Return for composition supplier - Section 39(2) read with rule 62 of the CGST Rules

5.2.1 - Who has to file

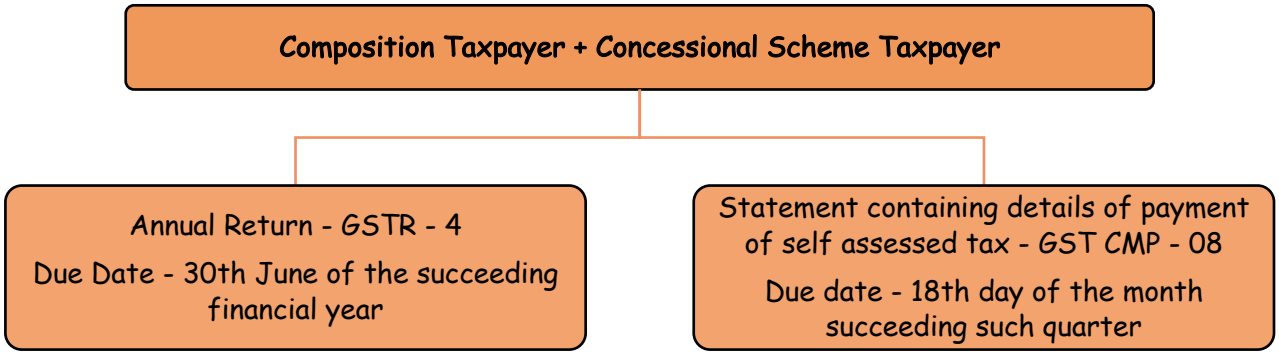
- Every registered person paying tax under section 10, i.e. a composition supplier is required to file an ***annual return in Form GSTR-4***.
- A ***person paying concessional tax @ 6%*** under Notification No. 2/2019 CT (R) dated 07.03.2019 is also required to file GSTR-4.
- All the provisions regarding GSTR-4 are also applicable for persons paying tax under the said notification.

5.2.2 - Annual return and quarterly statement

- GSTR-4 for a financial year or part of a financial year should be filed electronically.
- The persons required to file GSTR-4 are also required to furnish a statement in the Form GST CMP-08 containing details of payment of self-assessed tax, for every quarter (or part of the quarter).
- The due date for filing GST CMP-08 by ***18th day of the month succeeding such quarter.***

> ***Quarter [Sec 2(92)]*** *- mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year.*

- GSTR-4 for a financial year should be furnished by ***30th June of the succeeding financial year.***



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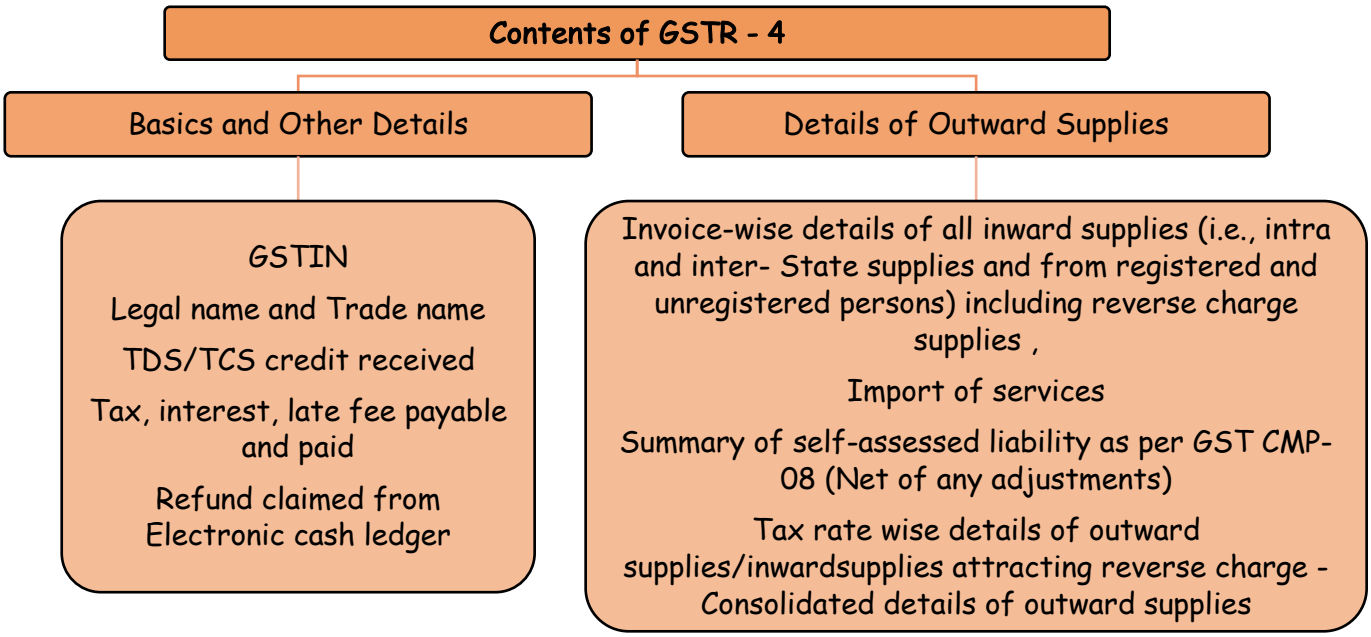
- The ***inward supplies*** of a composition supplier received from registered persons filing GSTR-1 will be ***auto populated in FORM GSTR-4A*** for viewing.
- Even if there is no business activity in any particular tax period, for such tax period(s), a Nil GST CMP-08 is required to be filed.

5.2.3 - Consolidated details and discharge of liability

- Composition taxpayers are neither entitled for any ITC nor entitled to pass on any ITC to its customers.
- Therefore, composition taxpayers are required to ***provide consolidated details of outward supplies in GSTR-4*** and not invoice-wise details.
- However, details of inter-State and intra-State inward ***supplies received*** from registered and un-registered persons are to be ***provided invoice-wise***.
- Since composition suppliers are not eligible to take ITC, they ***discharge their tax liability only by debiting electronic cash ledger.***

5.2.4 – Contents of GSTR – 4



5.2.5 - Conversion from normal scheme to composition scheme and vice versa

- The composition supplier will not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to their opting to pay tax under composition scheme.
- A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer will, where required, furnish-
  - ***GST CMP-08*** - relating to the period prior to his exiting from composition scheme – Up to 18th of the month succeeding the quarter in which the date of withdrawal falls.
  - ***GSTR-4*** – Up to 30th June following the end of the financial year during which such withdrawal falls.

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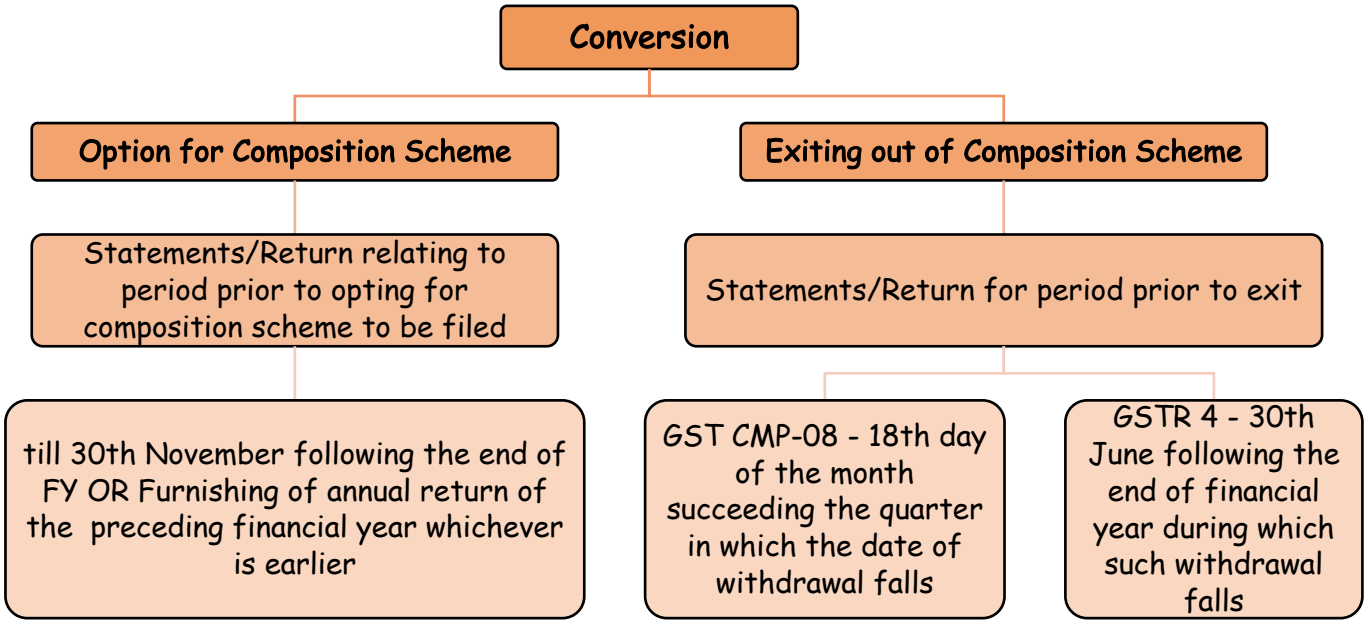

5.3 - Return for Non-Resident Taxable Persons - Section 39(5) read with rule 63 of the CGST Rules

- Non-Resident Taxable Persons (NRTPs) are those suppliers who do not have a business establishment in India and have come for a short period to make supplies in India.
- A registered NRTP is not required to file separately the Statement of Outward Supplies and applicable return for a normal taxpayer.
- Instead, a ***simplified monthly tax return*** has been prescribed in ***Form GSTR-5*** for a NRTP for every calendar month or part thereof.
- The details of outward supplies and inward supplies of a NRTP are incorporated in GSTR-5.
- ***Last date of filing return*** - GSTR-5 should be furnished within
  - 20 days after the end of the calendar month OR
  - within 7 days after the last day of validity period of the registration, whichever is earlier.
- A NRTP should pay the tax, interest, penalty, fees or any other amount payable under the CGST Act or the provisions of CGST Rules, till the last date of filing GSTR- 5.
- Thus, the due date of payment is linked with the due date of filing return.
- Also, NRTPs or casual taxable persons are required to make advance deposit of an amount equivalent to their estimated tax liability for the period for which registration is sought or extension of registration is sought in terms of section 27(2).

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- A NRTP is not required to file an annual return.

6. RECTIFICATION OF ERRORS/OMISSIONS - SECTION 39(9)

- In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return.
- ***Instead of revising the return already submitted, the system allows for amendment***. Thus, one can change the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided therein for the purposes of amending previously declared details.
- Omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the tax period during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest.
- The maximum time limit within which the rectification of errors/omissions is permissible is ***earlier of the following dates***:
  - 30th November following the end of Financial Year or
  - Actual date of filing of the relevant annual return

- The last date of filing of annual return for a financial year is 31st December of next financial year.

7. ANNUAL RETURN AND FINAL RETURN

7.1 - Annual Return - Section 44 read with rule 80 of the CGST Rules

7.1.1 - Who is required to file

- All registered persons are required to file an annual return ***except***:
    1. Casual taxable persons.
    2. Non- resident taxable person
    3. Input service distributors
    4. Persons authorized to deduct/collect tax at source under section 51/52 and
    5. Person supplying OIDAR services from outside India to unregistered persons in India
- Filing of annual return for the registered persons whose aggregate turnover is less than Rs. 2 crore is optional.

7.1.2 - Due date

- The annual return for a financial year needs to be filed by ***31st December of the next financial year.***
- The due date of filing annual return may be extended by the Commissioner/ Commissioner of State GST/Commissioner of UTGST for a class of taxable persons by way of a notification.

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7.1.3 - Prescribed form

- ***Normal taxpayers***: The annual return is to be filed electronically in ***Form GSTR-9*** through the common portal.

7.1.4 - Statements to be filed with Annual return

- Every registered person whose turnover is more than 5 crores should submit a ***self-certified reconciliation statement*** in Form GSTR 9C.
- Reconciliation Statement reconciles the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.

7.2 - Final Return - Section 45 read with rule 81 of the CGST Rules

- Every registered person who is required to furnish return u/s 39(1) and ***whose registration has been surrendered or cancelled*** is required to file a final return
- It has to be electronically in ***Form GSTR-10*** through the common portal.
- The final return has to be filed within 3 months of the:
    - Date of cancellation or
    - Date of order of cancellation

whichever is later.

- This provision is not applicable to composition taxpayers. Thus, they are not required to file final return if their registration is surrendered or cancelled.

7.3 - Details of inward supplies of persons having UIN - Rule 82 of the CGST Rules

- Unique Identification Number, ***UIN***, is a special class of ***GST*** registration for foreign
- diplomatic missions and embassies which are not liable to taxes in the Indian territory.
- Any amount of tax (direct or indirect) collected from such bodies is refunded back to them.
- ***When UIN is issued for claiming refund of taxes paid on inward supplies*** - Such person shall furnish the details of the inward supplies of taxable goods and/or services on which refund of taxes has been claimed, in ***Form GSTR- 11, along with application for such refund claim.***
- ***When UIN is issued for purposes other than refund of taxes paid*** - Such person shall furnish the details of inward supplies of taxable goods and/or services ***as may be required by the proper officer in Form GSTR-11.***

8. DEFAULTS AND CONSEQUENCES OF DEFAULTS

8.1 - Notice to return defaulters - Section 46 read with rule 68 of the CGST Rules

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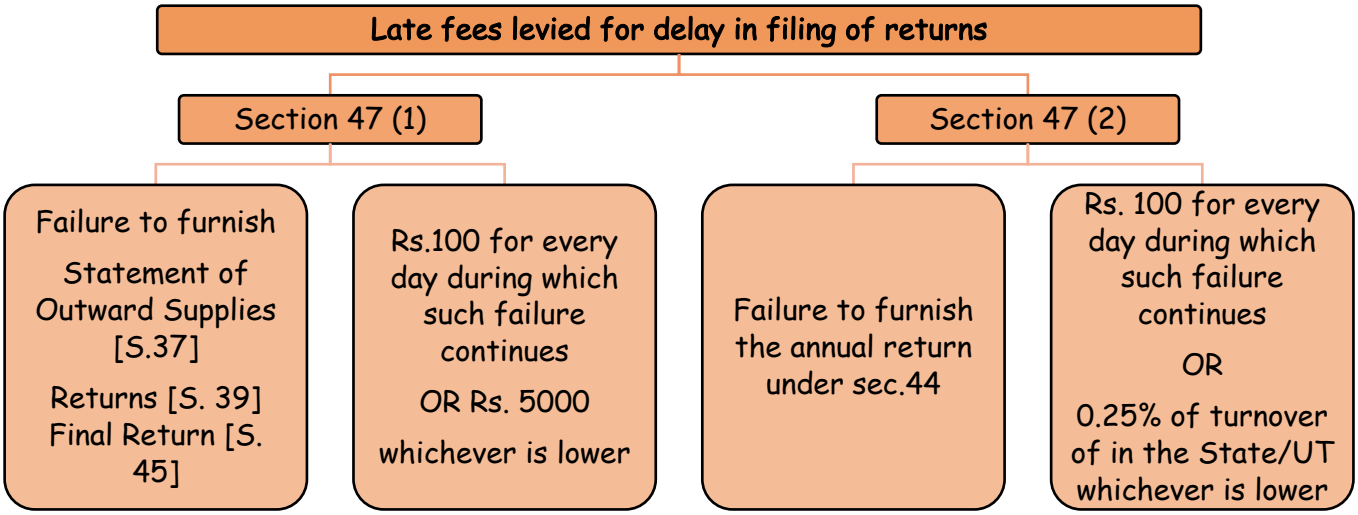
- A notice is issued, electronically, to a registered person who fails to furnish return under section 39 [Normal Return] or section 44 [Annual Return] or section 45 [Final Return] or section 52 [TCS Statement].
- The prescribed form for the notice is ***GSTR-3A***.
- The notice requires the registered person to ***furnish the return within 15 days.***

Notice in GSTR 3A

- Default u/s 39 GSTR 3B
- Default u/s 44 GSTR 9 & GSTR 9A
- Default u/s 45 GSTR 10
- Default u/s 52 TCS Statement

8.2 - Late fees levied for delay in filing return - Section 47



- Late fee payable by a registered person for delayed filing of a return and/or annualreturn, as mentioned above, is with reference to only the CGST Act. An ***equal amount of late fee would be payable by such person under the respective SGST/UTGST Act as well.***

In case of delayed filing of GSTR 1 or GSTR 3B, the late fee shall be as under:

- In case of Nil return – INR 20 (CGST + SGST) per day subject to maximum of 500
- If turnover does not exceed 1.5 crore – INR 50 (CGST + SGST) per day subject to maximum of 2000
- If turnover exceeds 1.5 Crore but does not exceed 5 crore – INR 50 (CGST + SGST) per day subject to maximum of 5000
- If turnover exceeds 5 Crore – INR 50 (CGST + SGST) per day subject to maximum of 10,000

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In case of delayed filing of GSTR 4, the late fee shall be as under:

- In case of Nil return - INR 20 (CGST + SGST) per day subject to maximum of 500
- In any other case – INR 50 (CGST + SGST) per day subject to maximum of 2000

In case of delayed filing of GSTR 9, the late fee shall be as under:

- If turnover does not exceed 5 Crore - INR 50 (CGST + SGST) per day subject to maximum of 0.04% of turnover
- If turnover exceeds 5 crore but does not exceed 20 crore - INR 100 (CGST + SGST) per day subject to maximum of 0.04% of turnover
- If turnover exceeds 20 crore - INR 200 (CGST + SGST) per day subject to maximum of 0.5% of turnover

9. GOODS AND SERVICES TAX PRACTITIONERS - SECTION 48

- A registered person may authorise an approved GSTP to furnish information, on his behalf, to the Government.

- GSTN provides separate user ID and Password to GSTP to enable him to work on behalf of his clients without asking for their user ID and passwords. They can do all the work on behalf of taxpayers as allowed under GST Law.
- A taxpayer may choose a different GSTP by simply unselecting the previous one and then choosing a new GSTP on the GST portal.
- A GSTP enrolled in any State or Union Territory shall be treated as enrolled in the other States/Union territories.
- When a registered person opts to furnish his return through GSTP, he gives his consent in prescribed form to any GSTP to prepare and furnish his return. ***However, the responsibility for correctness of any particulars furnished in the return or other details filed by the GSTP continues to rest with the registered person.***
- The registered person before confirming, should ensure that the facts mentioned in the return are true and correct before signature. However, failure to respond to request for confirmation is treated as deemed confirmation.
- The GSTP should prepare all statements with due diligence and affix his digital signature on the statements prepared by him or electronically verify using his credentials.
- If the GSTP is found guilty of misconduct, his enrolment will be liable to be cancelled and a show cause notice would be issued to him.

9.1 - Eligibility criteria for GSTP

9.1.1 - Pre-requisites

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1. He is an ***Indian citizen***
2. He is a Person of ***sound mind***
3. He is ***Not*** adjudicated as ***insolvent***
4. He is ***Not*** been ***convicted*** by a competent court

9.1.2 - Conditions to satisfy

- He should satisfy any of the following conditions:
    1. Retired officer of Commercial Tax Department of any State Govt./CBIC who, during service under Government had worked in a post not lower than the rank of a Group-B gazetted officer for a period ≥ 2 years
    2. Enrolled as a Sales Tax Practitioner or Tax Return Preparer under the earlier indirect tax laws for a period of not less than 5 years
    3. Has acquired any of the prescribed qualifications.

9.1.3 - Prescribed qualifications

1. Graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force

2. Degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in clause (1)
3. Any other examination notified by the Government, on the recommendation of the Council, for this purpose.
4. Any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination
5. Has passed final examination of ICAI/ ICSI/ Institute of Cost Accountants of India.

9.2 - Activities which can be undertaken by a GSTP

- A GSTP can undertake any/all of the following activities on behalf of a registered person, if so, authorised by him:
    1. Furnish details of outward and inward supplies
    2. Furnish monthly, annual or final return
    3. Make deposit for credit into electronic cash ledger
    4. Furnish information for generation of e-way bill
    5. File an intimation to pay tax under the composition scheme or withdraw from the said scheme
    6. File a claim for refund
    7. File an application for registration amendment/ cancellation
    8. File an application for amendment or cancellation of enrolment under rule 58
    9. Also allowed to appear as authorised representative before any officer or department, Appellate authority or Appellate tribunal, on behalf of such a registered person provided he is enrolled as GSTP under rule 83.

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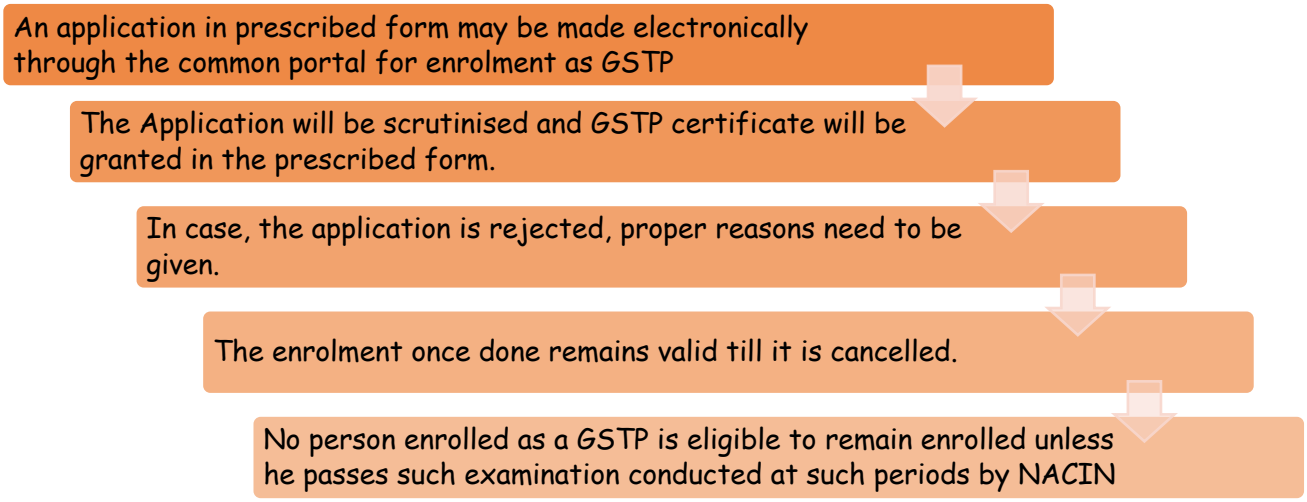
9.3 - Procedure for enrolment as GSTP



- Any person who has been enrolled as GSTP by virtue of him being enrolled as a Sales Tax Practitioner or Tax Return Preparer under the earlier indirect tax laws can remain enrolled only for a period of 30 months from the appointed date unless he passes the said examination within the said period of 30 months.
- NACIN - Stands for National academy of Customs, Indirect taxes and Narcotics

10. FILING OF RETURNS BY PERSON REQUIRED TO DEDUCT TAX AT SOURCE - SECTION 39(3) READ WITH SECTION 51 AND RULE 60(6) AND RULE 66 OF CGST RULES, 2017

- Whenever taxable goods or services or both are supplied to a Central/ State Government's Department/ establishment or, local authority, or Governmental agencies, recipient is required to deduct tax at source under section 51.
- Such deductor [person deducting TDS] is required to be compulsorily registered and deduct tax @1% of the payment made to the supplier (the deductee) of taxable goods or
- services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000 (excluding the amount of CGST, SGST, IGST, UTGST and cess indicated in the invoice).
- Tax Deducted at Source (TDS) refers to the tax which is deducted when the above specified recipient of goods or services makes some payments under a contract etc.

A. Monthly return

Deductor shall furnish a monthly return in ***Form GSTR-7*** electronically through the common portal.

In case of delayed filing, there shall be late fee of INR 50 (CGST + SGST) per day subject to maximum of 2000

B. Last date of filing return

The details in GSTR-7 should be furnished ***on/before 10th of the month succeeding the calendar month*** in which tax has been deducted at source.

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C. TDS details made available in GSTR-2A/4A

The details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the suppliers in Part C of Form GSTR-2A/ Form GSTR- 4A (in case of registered person opting for composition levy) on the common portal after the due date of filing of Form GSTR-7. The said supplier may include the same in its Form GSTR-2/GSTR-4.

D. Tax Deduction at Source (TDS) Certificate

A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment, TDS is deducted), within 5 days of crediting the amount to the Government. It contains the details pertaining to value on which tax has been deducted, rate of deduction, amount of tax deducted at source and amount paid to the Government.

11. FILING OF STATEMENT OF SUPPLIES EFFECTED THROUGH AN E-COMMERCE OPERATOR (TCS STATEMENT) - SECTION 52(4) READ WITH RULE 60(7) AND RULE 67 OF CGST RULES, 2017

- When a supplier supplies some goods or services to the consumer through the portal of an electronic commerce operator (ECO), the consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of its commission.

- The Government has placed the responsibility on ECO to collect the 'tax' at @ 1% from the supplier under section 52.
- This shall be done by the ECO by paying the supplier, the consideration of the product/services, less the tax, calculated at the rate of 1%.
- The amount so collected by ECO [while making the payment to the supplier] is referred as ***Tax Collected at Source (TCS)***. TCS will be calculated on the net value of the goods/services supplied through the portal of ECO.

A. Monthly return

ECO shall furnish a monthly return in ***Form GSTR-8*** electronically through the common portal. ***Form GSTR-8*** contains the details of supplies of goods or services or both effected through ECO, including the supplies of goods or services or both returned through it and the amount of tax collected at source.

B. Last date of filing return

The details in GSTR-8 should be furnished ***on/before 10th of the month succeeding the calendar month*** in which tax has been collected at source.

Further, the amount of tax collected by ECO (TCS amount) is required to be deposited by the 10th of the month succeeding the calendar month in which tax has been collected at source.

C. TCS details made available in GSTR-2A

The details of TCS furnished by the ECO in Form GSTR-8 shall be made available electronically to each of the suppliers in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8. Such suppliers may include the same in their Form GSTR-2.

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12. FILING OF RETURN BY AN INPUT SERVICE DISTRIBUTOR - SECTION 39(4) READ WITH RULE 60(5) AND RULE 65 OF CGST RULES, 2017

- ***Input Service Distributor (ISD)*** means an office of the supplier of goods or services or both which receives tax invoices issued towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same PAN as that of ISD.
- Many times, the Head Office procures certain services which are for common utilization of all units across the country. The bills for such expenses are raised on the Head Office. However, the Head Office itself does not provide any output supply so as to utilize the credit which gets accumulated on account of such input services.
- Since the common expenditure is meant for the business of all units, it is but natural that the credit of input services in respect of such common invoices should be apportioned between all the consuming units. ISD mechanism enables such proportionate distribution of credit of input services amongst all the consuming units.

- Thus, ISD can distribute the credit of "input services" (and not of inputs or capital goods) on common invoices pertaining to input services to various units belonging to the entities having same PAN (recipient of credit) in the prescribed manner, by issuing the ISD invoices.
- An ISD is required to distribute both eligible as well as ineligible credit as per rule 39 of the CGST Rules, 2017.

A. Monthly Return

ISD is not required to file separate statements of outward and inward supplies with its return. It needs to file only a monthly return in ***Form GSTR-6*** electronically through the common portal.

Form GSTR-6 contains the details of input tax credit received for distribution, total ITC/ eligible/ ineligible ITC to be distributed for the tax period, distribution of ITC, details of debit/ credit notes, etc.

B. Last date of filing return

The details in GSTR-6 should be furnished ***on/before 13th of the month succeeding the calendar month***. GSTR-6 can only be filed after 10th of the month and before 13th of the month succeeding the tax period.

C. Auto-population of input tax credit received for distribution

The details of input tax credit received for distribution by an ISD will be auto populated in ***Form GSTR-6A***. Such details are auto-populated in Form GSTR-6A when the registered suppliers file their GSTR-1.

ISD can view the auto-populated details of ITC received for distribution in GSTR-6A and, where required, after adding, correcting or deleting the details, furnish GSTR-6.

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D. ISD will not have reverse charge supplies

An ISD cannot accept any invoices on which tax is to be discharged under reverse charge mechanism. If ISD wants to take reverse charge supplies, in that case it has to separately register as a normal taxpayer. This is because the ISD mechanism is only to facilitate distribution of credit of taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to Government account. ISD will have late fee and any other liability only.

13. GSTR-5A

Every registered person either providing:

i. online money gaming from a place outside India to a person in India, or

ii. providing OIDAR services from a place outside India:

   a. to a non-taxable online recipient referred to in section 14 of the IGST Act or

   b. to a registered person other than a non-taxable online recipient,

shall file return in GSTR-5A on or before 20th day of the month succeeding the calendar month or part thereof.

With effect from 01.10.2023, rule 64 has been amended to include the details of supplies made by the OIDAR service provider located outside India to registered persons in India other than non-

taxable online recipient in India for tracking of payment of tax on reverse charge basis by registered taxpayers. Further, a registered person providing online money gaming from a place outside India to a person in India is also required to furnish Form GSTR-5A

14. RULE 88 D

- Where the ITC availed by a RP in GSTR 3B for a tax period exceeds the ITC available in GSTR 2B, by such amount & percentage as may be recommended by the council, the RP shall be intimated of such difference in Part A of FORM GST DRC-01C.
- The RP shall either
    - pay the excess ITC amount along with interest through DRC 03 & furnish the details thereof in Part B of FORM GST DRC-01C. or
    - furnish a reply, incorporating reasons why excess ITC that has still remained to be paid, in Part B of FORM GST DRC-01C within 7 days.
- Where any amount remains to be paid within the period of 7 days and where no explanation or reason is furnished by the registered person in default or where the explanation furnished by such person is not found to be acceptable by the PO, the said amount shall be liable to be demanded

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LIST OF RETURNS/STATEMENTS UNDER GST

Return/ Statement	Periodicity/ Description	Who files?	Date of filing
GSTR-1	Monthly statement of outward supplies of goods and/or services	Person registered under regular scheme (including a casual taxable person)	Due date prescribed in the Act is ***10th day of the next month***. However, presently, the same is being extended to 11th day of the next month (up to 31st March 2021)
GSTR-3B	Monthly return	Person registered under regular scheme including casual taxable person	Due date prescribed in the Act is ***20th day of the next month.*** ***Staggered payment*** - Annual turnover ≥ Rs.5 crore in previous financial year - 20th of the month. Annual turnover < Rs. 5 crores in previous financial year - 22nd or 24th of the month depending upon the State or Union Territory in which they are registered. Presently, the staggered filing has been provided for tax periods till March 2021.
GSTR-4	Return for a financial year	Registered person paying tax under composition scheme	30th April of the next financial year
GSTR-5	Monthly return	Registered non- resident taxpayer	20th day of the next month or within 7 days after expiry of registration, whichever is earlier
GSTR-9	Annual Return	Registered person other than an ISD, tax deductor/tax collector, casual taxable person and a non-resident taxpayer	31st December of the next financial year
GSTR-10	Final Return	Taxable person whose registration has been surrendered or cancelled	Within three months of the date of cancellation or date of order of cancellation, whichever is later.

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Illustration 1

Mr. X, a regular tax player, did not make any taxable supply during the month of July. Is he required to file any goods and services tax return?

Illustration 2

If a return has been filed, how can it be revised if some changes are required to be made?

Illustration 3

Explain the provisions to filing of Annual Return under Section 44 of CGST Act, 2017 and rules there under.

Illustration 4

What kind of invoice details of outward supplies are required to be furnished in GSTR for outward supplies?

Illustration 5

M/s Cavenon Enterprises, a registered supplier of designer weeding dresses under regular scheme, has aggregate annual turnover of Rs. 30 lacs in the preceding financial year.
It is of the view that in the current financial year, it is permitted to file its monthly statement of outward supplies – GSTR-1 – on a quarterly basis while its accountant advises it to file the same on monthly basis.
You are required to advice M/s Cavenon Enterprises on the same.
During a given tax period in the current financial year, owing to an off-season, M/s Cavenon Enterprises has not made any taxable supply. Therefore, M/s Cavenon Enterprises opines that no return under GST is required to be filed for the said period.

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You are required to examine the technical veracity of the opinion of M/s Cavenon Enterprises.

Illustration 6

Mr. X is an NRTP. Is he required to file any return? If yes, what is the return to be filed?

Illustration 7

Whether Audit Report is required to be obtained from Chartered Accountant or Cost Accountant and attached along with Annual return?

Illustration 8

What are the consequences if any person who is required to file return, does not file any return?

Illustration 9

Is annual return and final return one and the same?

17. REFUNDS

Contents

- Understanding the situations in which refund can be claimed.
- Understanding the procedure to be followed for claiming the refund.
- Understanding about the credits and debits in Consumer Welfare Fund.

1. REFUND OF TAX – SECTION 54 READ WITH RULES

1.1 - When can a person claim the refund of GST?

The refund can be claimed in the below mentioned situation –

1. ***Zero rated supply –***
   - Zero rated supply consist of –
     - supply of goods or services to SEZ unit or developer and
     - export of goods or services.
   - The refund of IGST paid on such supply is available when the above-mentioned supply is made with payment of IGST.
   - When the supply is made without payment of IGST, the refund of unutilised credit is available.
2. The ***unutilised credit*** can be claimed as refund in case of ***inverted duty structure***.

   Note –
   When the tax ***rate of the inputs exceeds the tax rate on outputs***, such supplies come under inverted duty structure.

   Example –
   The inputs required in textile industry are taxed at 12% and 18% whereas the output is taxed at 5%. In this case, the rate of tax on inputs exceeds the rate of tax on output, thus making the refund of unutilised credit eligible under Section 54.
3. The ***tax paid*** on the supply of goods regarded as ***deemed*** exports can be claimed as refund.
4. Any ***balance in the electronic cash ledger*** after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed as refund.

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5. When ***tax is paid on advance received for supply of service*** but the a***dvance has to be returned back*** due to some reason, ***such tax paid can be claimed as refund***.
6. When ***tax is wrongly collected and paid*** to the Government i.e. CGST & SGST is paid instead if IGST or vice-versa, such amount wrongly paid can be claimed as refund after payment of the correct tax. [Section 77]
7. ***IGST paid by tourist leaving India*** on any supply of goods taken out of India by him can be claimed as refund. [Section 15 of IGST Act].
8. Tax can become refundable as a ***consequence of judgment, decree, order or direction*** of the Appellate Authority, Appellate Tribunal or any Court.
9. On ***finalization of provisional assessment under Section 60***, if the ***amount of tax on final assessment is less than the tax deposited*** by the taxpayer, such amount can be claimed as refund.
10. The ***taxes paid by UN bodies or embassies*** etc. on ***any purchases made*** by them can be claimed as refund.
11. Refund of ***taxes to the retail outlets*** established in dep***arture area of an international airport beyond immigration counters*** making tax free supply to an outgoing international tourist.
12. ***Advance tax*** deposited by a ***casual taxable person or Non-resident taxable person*** can be claimed as refund.
13. Excess payment of tax.

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1.2 - Application for refund of tax, interest, penalty, fees or any other amount [Rule 89]

- The refund can be claimed by filing an ***application electronically*** in ***Form GST RFD-01***.
- A ***registered person*** claiming refund of ***any balance in the electronic cash ledger*** in accordance with the provisions of section 49(6), may claim such refund in Form GST RFD-01 electronically through GST common portal.
- ***Any amount***, which ***remains unutilized in electronic cash ledger***, ***after discharge of tax dues*** and other dues payable under the CGST Act and rules made thereunder, ***can be refunded to the registered person as excess balance in electronic cash ledger*** as above.
- Further, a registered person, who has been issued a certificate of registration under GST, shall undergo Aadhaar authentication for filing of refund application in Form RFD-01.
- If any interest has been paid in excess along with tax, the same also can be claimed as refund

Exception –

The requirement of RFD-01 is not there in the following cases –

- In case of ***refund of IGST paid*** in case of ***exports***, the ***shipping bill filed by the exporter*** is itself treated as a refund claim.
- Persons covered under ***Section 55*** like UN bodies, embassies, etc.

- Refund of any ***balance in the electronic cash ledger*** may be claimed through the form filed as per section 39 (Form GSTR-3 or Form GSTR-4 or Form GSTR-7).

  Note –

  - The law specified the above provision but practically, the application for refund of balance in the Electronic Cash Ledger is ***also being filed in Form GST RFD-01A***.
  - While filing refund application, the applicant needs to select the reason of refund as 'Refund on account of excess balance in cash ledger'.
  - Thereafter, the ***balance amount available in Electronic Cash Ledger is auto-populated*** in said refund application.
  - The applicant enters the amount of refund to be claimed and Electronic Cash Ledger is debited for the amount claimed as refund.

1.3 - Who can file the application of refund and what are the additional conditions to be followed?

Since, two parties i.e. supplier and recipient are involved in every transaction of supply. In this section, we will clearly understand who can file the application for refund under different scenarios and what are the additional conditions needed to be fulfilled by them.

1. ***Deemed exports –***

   - The ***recipient or supplier*** can file the refund application.
   - However, the ***supplier can seek refund only*** in case where –
     - the ***recipient does not avail of ITC*** on such supplies and
     - ***furnishes an undertaking*** to the effect that the supplier may claim the refund.
   - Value of goods exported out of India shall be taken as –
     - FOB value declared in Shipping Bill/Bill of Export form or
     - Value declared in tax invoice/bill of supply,

     whichever is less.
   - It is to be noted that where ***recipient claims the refund*** on such supplies, there is ***no restriction*** on such recipient ***in availing ITC of the tax paid*** on such supplies.
   - However, it is important to note that the ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, t***he ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of section 17***. This implies that ***entire amount paid by the recipient will be available as ITC irrespective of the fact whether it is blocked in terms of section 17(5).***

2. ***Supply to SEZ unit or developer –***

   - The application for refund shall be filed by the ***supplier*** of goods or services after receipt of the evidence that such goods or services are ***used for authorised purpose only***, as endorsed by the specified officer of the zone.

- The above authorisation is necessary as the supplies of goods or services to SEZ unit or developer are classified as zero-rated supply only when they are used for authorised purposes (as discussed in Chapter – Imports and exports).

3. ***Supplies by Casual Taxable person (CTP) / Non-resident Taxable person (NRTP) –***

- The amount of ***advance tax deposited*** by a casual taxable person or a non- resident taxable person as per section 27, shall be ***refunded only when*** such person has ***furnished all the returns*** required under section 39 in respect of the ***entire period*** for which the certificate of registration granted to him had remained in force.
- The amount of ***tax payable*** by the applicant shall be ***adjusted against the advance tax*** deposited by him.
- Refund shall be ***claimed in the last return*** required to be furnished by him.

1.4 - Time limit for claiming refund

The application shall be made by the person claiming the refund within ***2 years from the 'relevant date'***.

The meaning of 'relevant date' is different in different circumstances. A detailed note on the same is mentioned below –

1. ***Export of goods –***

- When goods are ***exported by sea or air*** – The relevant date is the date on which ***the ship or the aircraft*** in which such goods are loaded ***leaves India***.
- When goods are ***exported by land*** – The relevant date is the date on which ***goods pass the frontier***.
- When goods are ***exported by post*** – The relevant date is the ***date of dispatch of goods*** by the Post Office concerned to a place outside India.

2. ***Export of services –***

- When the ***supply of service is completed prior to receipt of payment*** – The relevant date shall be the ***date of receipt of payment*** in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.
- When the ***advance payment is received*** prior to the date of issue of invoice – The relevant date shall be the ***date of issue of invoice***.

3. ***Deemed export –***

- The relevant date is the date on which the ***return relating to such deemed exports is furnished.***
- Irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. As the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, ***the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier***.

4. ***Zero-rated supplies to a SEZ developer/unit***
   Due date for furnishing of return under section 39 in respect of such supplies

5. ***Refund as a consequence of a judgement, decree, order or direction –***
   Where tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the relevant date shall be the ***date of communication*** of such judgment, decree, order or direction.

6. ***Inverted duty structure –***
   The relevant date shall be the ***due date for furnishing of return*** under section 39 for the period in which such claim for refund arises.

7. ***Provisional payment of tax –***
   In the case where tax is paid provisionally, the relevant date shall be the ***date of adjustment of tax after the final assessment*** thereof.

8. ***Filing of claim by person other than supplier –***
   In case when the refund claim is filed by any person other than the supplier, the relevant date shall be the ***date of receipt of goods or services or both*** by such person.

9. ***Any other case –***
   In any other case, the relevant date shall be the ***date of payment of tax***.

1.5 - Bunching of refund applications

While filing the refund claim, an applicant may file a refund claim for a tax period or by ***clubbing successive tax periods***.

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Earlier, there was a restriction on bunching of refund claims across financial years but now the said restriction has also been relaxed.

1.6 - Documentary evidences needed

- The main document for claiming refund is a ***statement of relevant invoices or shipping bills*** pertaining to the claim.
- A ***declaration*** needs to be furnished to establish that there is ***no unjust enrichment*** in cases where the ***amount of refund*** claimed ***does not exceed Rs. 2 lakhs***.

Note –

'Unjust enrichment' means that the amount of refund claimed by the applicant was collected from or paid by him and the incidence of such tax and interest had not been passed on to any other person.

- However, where the amount of refund claimed ***exceeds Rs. 2 lakhs***, a ***Certificate*** by a Chartered Accountant or a Cost Accountant in Annexure 2 of Form GST RFD-01 to the ***effect that there is no unjust enrichment in the case of the applicant***.

There is ***no need*** for the above declaration or certification in which the ***theory of unjust enrichment is inapplicable.***

Thus, the cases where unjust enrichment is inapplicable and the above declaration or certification is not required are –

- refund of tax paid on ***export of goods or services*** or both or on inputs or input services used in making such exports;
- refund of ***unutilised ITC in case of zero-rated supplies*** made without payment of tax;
- refund of ***unutilised ITC*** on account of ***inverted duty structure***;
- refund of ***tax paid on a supply which is not provided***, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued.
  Example – when tax is paid on advance received for a service which is later refunded.
- ***refund of tax in pursuance of section 77***, i.e. tax paid on a transaction treating it as an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;
- the tax or interest borne by such other class of applicants as the Government may specify ***by way of notification*** on the recommendations of the Council.

The other documentary evidences to be ***accompanied in Annexure 1*** of Form RFD-01 in different situations has been elaborated below –

1. A ***judgment, decree, order or direction*** of Appellate Authority, Appellate Tribunal or any Court –
   - ***Copy of the order*** passed by the proper officer or an Appellate Authority or Appellate Tribunal or Court resulting in such refund, or
   - ***reference number of the payment of the amount*** specified in section 107 and section 112 claimed as refund i.e. the amount deposited at the time of filing of appeal before Appellate Authority or Appellate Tribunal.

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2. ***Export of goods –***

   A ***statement*** containing the number and date of ***shipping bills or bills of export*** and ***relevant export invoices***.

3. ***Export of services –***
   - Statement containing the number and date of invoices and
   - the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates (BRC/FIRC), as the case may be.

4. ***Supply of goods to SEZ unit or developer –***
   - Statement containing the ***number and date of invoices***.
   - Evidence that the ***goods are admitted in full for authorized operations*** as endorsed by the specified officer of SEZ.
   - A ***declaration*** that ***tax has not been collected*** from the SEZ unit or developer.

5. ***Supply of services to SEZ unit or developer –***
   - Statement containing the ***number and date of invoices***.

- Evidence regarding ***receipt of services for authorized operations*** as endorsed by the specified officer of SEZ.
- The ***details of payment*** made along with the proof.
- A ***declaration*** that ***tax has not been collected*** from the SEZ unit or developer.

6. ***Deemed exports –***
   - Statement containing the ***number and date of invoices***.
   - A proof of receipt of goods by the way of –
     - ***acknowledgment by the jurisdictional Tax officer*** of the Advance Authorisation (AA) holder or Export Promotion Capital Goods (EPCG) Authorisation holder, as the case may be, that the said ***deemed export supplies have been received*** by the said AA or EPCG Authorisation holder or
     - a ***copy of the tax invoice*** under which such supplies have been made by the supplier, ***duly signed by the recipient EOU*** that said deemed export supplies have been received by it.
   - An ***undertaking by the recipient*** of deemed export supplies that –
     - ***no ITC*** on such supplies ***has been availed*** by him and
     - he shall ***not claim the refund*** in respect of such supplies and
     - the ***supplier may claim the refund***.

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7. ***Inverted Duty structure –***
   A ***statement*** containing the ***number and the date of the invoices*** received and issued during a tax period.
8. ***Finalization of provisional assessment –***
   The reference number of the final assessment order and a copy of the said order.
9. ***Tax wrongly collected and paid to the government –***
   Statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply.
10. ***Excess payment of tax –***
    Statement showing the details of the amount of claim on account of excess payment of tax.

1.7 - Detailed note on unjust enrichment

Meaning –

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

Relation in GST Act –

Theory of unjust enrichment, under GST, postulates that only the ***person who has NOT passed the incidence of tax*** will be eligible to claim the refund.

Where the ***amount of tax has been recovered*** from the recipient, it shall be ***deemed*** that ***the incidence of tax has been passed on to the ultimate consumer***.

Under unjust enrichment, a ***presumption is always drawn*** that the ***businessman will shift the incidence of tax*** to the final consumer.

Refund credited to Consumer Welfare Fund –
It is for this reason that ***every refund claim*** if sanctioned is ***first transferred to the Consumer Welfare Fund***.

If the claim of refund ***passes the test of unjust enrichment***, it is ***paid to the applicant***.

However, there are ***certain exceptions*** where ***unjust enrichment is not applicable*** (as discussed above), in which case the ***amount of refund is credited directly to the applicant***.

1.8 - Acknowledgement of the refund claimed - Rule 90

In case of claim for refund from the electronic cash ledger –

An acknowledgment in prescribed form shall be made available to the applicant, clearly indicating the date of filing of the claim for refund.

In any other case –

- The application shall be ***forwarded to the proper officer***.
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- The proper officer shall ***scrutinize the application for its completeness***.
- Such scrutinisation shall be done within a period of ***15 days*** from the date of filing of the said application.
- Where the ***application is found to be complete***, an ***acknowledgement in prescribed form*** shall be made available to the applicant through the common portal electronically.
- Where any ***deficiencies are noticed***, the proper officer shall communicate the deficiencies to the applicant in Deficiency memo, requiring him to ***file a fresh refund application*** after rectification of such deficiencies.
- Refund acknowledgment shall clearly ***indicate the date of filing*** of the claim for refund.
- The acknowledgement is of utmost importance as the ***refund order*** is required to be ***issued within 60 days*** from the ***date of filing claim*** for refund as mentioned in said acknowledgment.
- ***The time period from the date of filing of the refund claim till the date of communication of the deficiencies*** in the prescribed form by the proper officer, ***shall be excluded from the period of '2 years'*** as specified under section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies

1.9 – Withdrawal of Refund Claim

- The applicant may, ***at any time before issuance of provisional refund sanction order or final refund sanction order or payment order or refund withhold order or show-cause notice***, in respect of any refund application filed, ***withdraw the said application f***or refund by filing an application in the prescribed form [Rule 90(5)].
- On submission of such withdrawal application, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing refund application, ***shall be credited back to the ledger from which such debit was made*** [Rule 90(6)]

1.10 - Grant of provisional refund

- A ***provisional refund of 90%*** of the total amount claimed, excluding the amount of ITC provisionally accepted, can be granted.
- Such refund can be given only in case of ***refund on account of zero-rated supply of goods or services*** or both made ***by registered persons***.
- The government may, on the recommendations of the Council, ***notify*** such category of registered persons who will ***not be eligible for provisional refund***.
- Refund can be granted only if the person claiming refund had ***not been prosecuted*** for any offence under the Act or under an existing law where the ***amount of tax evaded exceeds Rs. 2.5 crores,*** during any ***period of 5 years immediately preceding the tax period*** to which the claim for refund relates.

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- The proper officer shall pass an order sanctioning the amount of refund ***within 7 days*** from the date of the acknowledgement.
- The order shall be passed after the proper officer has ***scrutinised the claim and evidences*** and is prima facie satisfied that the amount claimed as refund is due to the applicant.
- The proper officer shall ***issue a payment order*** for the amount sanctioned.
- The payment shall be ***electronically credited to any of the bank accounts*** of the applicant mentioned in his registration particulars and as specified in the application for refund ***on the basis of a consolidated payment advice***.
- However, the payment order shall be required to be ***revalidated*** where the ***refund has not been disbursed within the same financial year*** in which the said payment order was issued.
- The ***Central Government*** shall ***disburse*** the refund ***based on the consolidated payment advice.***
- The ***final settlement order*** of the refund claim shall be passed ***after due verification of documents*** furnished by the applicant.
- Provisional Refund is not granted in certain cases
    - If applicant was prosecuted for an offence, where the tax evaded exceeds Rs. 2.5 crores, during any period of 5 years preceding the refund period.
    - Based on risk parameters, system initiates scrutiny

- If applicant has not undergone Aadhaar authentication
- If the applicant is engaged in the supply of Areca nuts, Pan masala, Tobacco and manufactured tobacco substitute and Essential oils.

1.11 - Refund order

- The proper officer shall ***examine the application*** of refund.
- Where he is ***satisfied*** that the refund is due and payable to the applicant, he shall ***make an order sanctioning the amount*** of refund.
- The order shall contain –
  - amount, if any, ***refunded to him on a provisional basis***,
  - amount ***adjusted against any outstanding demand*** and
  - the balance amount refundable.
- In cases where the ***amount of refund is completely adjusted*** against any outstanding demand, an order giving details of the adjustment shall be issued.
- The refund can be ***credited to the consumer welfare fund*** or may be ***payable to the applicant.***
- Where the proper officer is satisfied that the amount refundable is ***not payable to the applicant***, he shall make a ***refund order and issue an payment order*** for the amount of refund to be ***credited to the Consumer Welfare Fund***.
- Where the amount is payable to the applicant, the proper officer shall issue a ***payment order*** for the amount of refund payable to the applicant.
- Amount of refund shall be ***electronically credited*** to ***any of the bank accounts*** of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice.
- The ***refund order*** issued in prescribed form shall ***not be required to be revalidated*** by the proper officer.
- However, the ***payment order*** shall be required to be ***revalidated*** where the ***refund has not been disbursed*** within the ***same financial year*** in which the said ***payment order was issued***.
- The Central Government shall disburse the refund based on the consolidated payment advice.

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1.12 - Refund payable to applicant v/s consumer welfare fund

As discussed earlier, the amount of refund is payable ***directly to the applicant*** only when the ***theory of unjust enrichment is either not-applicable or is applicable but passed***.

The cases are re-iterated here –

- refund of tax paid on ***export*** of goods or services or both or on inputs or input services used in making such exports;

- refund of ***unutilized ITC*** in case of ***zero-rated supplies made without payment of tax*** or accumulated ITC on account of ***inverted duty structure;***
- refund of ***tax paid on a supply which is not provided***, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- refund of tax in pursuance of ***section 77***, i.e. tax paid on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;
- the tax and interest, if any, or any other amount paid by the applicant, if he had ***not passed on the incidence*** of such tax and interest to any other person; or
- the tax or interest borne by such ***other class of applicants*** as the Government may, on the recommendations of the Council, by ***notification***, specify.

In all the ***cases other than those mentioned above***, the amount of refund shall be directly ***credited in Consumer Welfare Fund***.

1.13 - Refund in cash and credit

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

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1.14 - Time limit for issue of refund order

- Refund order shall be issued by the proper officer ***within 60 days from the date of receipt of application*** complete in all respects.
- The time limit of 60 days shall be counted ***from the date of filing claim*** for refund ***as mentioned in the acknowledgment received*** for refund claim.

1.15 - Rejection of refund claim

- Where the ***proper officer is satisfied*** that the whole or any part of the amount claimed as refund is ***not admissible or is not payable*** to the applicant, he shall issue a notice to the applicant in prescribed form.
- The ***reasons*** has to be ***recorded in writing***.
- ***Applicant*** will be required to furnish a ***reply within 15 days*** of the receipt of such notice in prescribed form.
- The proper officer shall ***consider the reply furnished*** by applicant and ***give him an opportunity of being heard***.
- He shall make an ***order*** sanctioning the amount of refund in whole or part or rejecting the said refund claim.
- The said order shall be made ***available to the applicant electronically***.

- No application for refund shall be rejected without giving the applicant an opportunity of being heard.

1.16 - Withholding of refund claim

Refund of unutilised ITC –

- Where any refund of unutilized ITC is due to a registered person in case –
  - of ***zero-rated supplies*** made without payment of tax or
  - inverted duty structure and
- the said person has –
  - ***defaulted*** in furnishing any return or
  - is ***required to pay any tax, interest or penalty*** which has ***not been stayed*** by any Court, Tribunal or Appellate Authority by the specified date (i.e. the last date for filing an appeal under this Act),
- the proper officer may –
  - ***withhold payment of refund*** due until the said person has ***furnished the return or paid*** the tax, interest or penalty, as the case may be; or
  - ***deduct from the refund*** due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.
  - However, where the proper officer or the Commissioner is ***satisfied that the refund is no longer liable to be withheld***, he may pass an order for release of withheld refund in prescribed form

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Order of refund is under appeal –

- Where an –
  - ***order giving rise to a refund*** is the subject matter of an ***appeal or further proceedings*** or
  - where any ***other proceedings*** under this Act is ***pending*** and
- the ***Commissioner*** is of the opinion that grant of such refund is likely to ***adversely affect the revenue*** in the said appeal or other proceedings ***on account of malfeasance or fraud committed,***
- he may, after giving the taxable person an opportunity of being heard, ***withhold the refund*** till such time as he may determine.
- However, where a refund is withheld, the taxable person shall be ***entitled to interest @ 6% p.a.***, if as a result of the appeal or further proceedings ***he becomes entitled to refund***.

1.17 - Calculation of refund amount in case of zero-rated supply

Since, the registered persons are eligible to claim refund of ITC on zero-rated supply of goods or services ***without payment of tax*** under bond or LUT, a formula has been given under the law for proper calculation of eligible ITC for refund.

Formula for calculation of refund of ITC –

$$\text{Refund amount} = \frac{\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}}{\text{Adjusted total turnover}} \times \text{Net ITC}$$

The meaning of the terms used above is elaborated herewith –

1. ***Refund amount –***
   Refund amount means the ***maximum refund*** that is admissible.

2. ***Net ITC –***
   Net ITC ***includes*** –
   - ITC availed on ***input goods*** and
   - ITC availed on ***input services*** during the relevant period

3. ***Turnover of zero-rated supply of goods –***

   Turnover of zero-rated supply of goods shall be the lower of –

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   - ***value*** of zero-rated supply of goods made during the relevant period ***without payment of tax*** under bond or letter of undertaking or
   - the ***value*** which is ***1.5 times the value of like goods*** domestically supplied by the same or similarly placed supplier.

   Example –
   If the supplier makes exports for Rs. 10 lakhs under bond and the same goods are sold domestically for Rs. 5 lakhs, the value of turnover taken here shall be ***lower of*** –
   Rs. 10 lakhs or
   1.5 X Rs. 5 lakhs i.e. Rs. 7.5 lakhs.
   Thus, the turnover value taken into consideration shall be Rs. 7.5 lakhs.

4. ***Turnover of zero-rated supply of service –***

   The turnover of zero-rated supply of service shall include –
   - ***payments received*** during the relevant period for zero-rated ***supply of services*** (i.e. services are provided and payment is received within same relevant period) and
   - zero-rated supply of services where ***supply has been completed*** in the current relevant period but for which payment had been received in advance in any prior period,

   but ***excludes*** –
   - ***advances received*** for zero-rated supply of services during the relevant period for which the ***supply of services has not been completed*** during the relevant period.

5. ***Adjusted Total turnover –***

Adjusted total turnover ***includes*** –

- the ***turnover in a State or a Union territory*** excluding turnover of services and
- the turnover of zero-rated supply of services determined above and non-zero-rated supply of services,

but ***excludes*** –

- the value of ***exempt supplies other than zero-rated supplies***, and

Note –

The value of zero-rated supply of goods to be included while calculating "adjusted total turnover" will be same as determined in "Turnover of zero-rated supply of goods" i.e. lower of the value or 1.5 times of domestically supplies value.

6. ***Specified period –***

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

1.19 - Calculation of refund amount in case of inverted duty structure

The registered persons covered under inverted duty structure can claim the refund of unutilised input tax credit. The formula to be used for calculation of admissible refund amount is given as under:

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

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The meaning of the terms used above is elaborated herewith –

1. ***Net ITC –***

Net ITC ***includes*** –

- ITC availed on ***input goods***,

2. ***Adjusted Total turnover –***

Adjusted total turnover ***includes*** –

- the ***turnover in a State or a Union territory*** excluding turnover of services and
- the turnover of zero-rated supply of services determined above and non-zero-rated supply of services,

but ***excludes*** –

- the value of ***exempt supplies other than zero-rated supplies***, and

3. ***Specified period –***

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

Other important points –

1. If there is any ***change in the rate of tax*** due to which the registered person gets covered under inverted duty structure, for instance, an applicant trading in goods has purchased, say goods "X" attracting 18% GST, however, subsequently, the rate of GST on "X" has been reduced to, say 12%, then in such cases, it has been clarified that the ***input and output being the same, though attracting different tax rates at different points in time, do not get covered under refund due to inverted duty structure***.

   Thus, refund of accumulated ITC under said clause would not be applicable in cases where the input and the output supplies are the same.

2. It is interesting to note that the ***refund of accumulated ITC*** shall be re***stricted to the ITC as per those invoices*** whose –

   - ***details are uploaded*** by the supplier in ***Form GSTR-1*** and
   - the invoices which are ***reflected in the Form GSTR-2A*** of the applicant.

1.20 - Determination of refundable amount

In the cases of refund of unutilised ITC on account of zero-rated supply without payment of tax or inverted tax structure, the refund shall be the ***least*** of –

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- the ***maximum refund amount as per the above formula*** (the formula is applied on the consolidated amount of ITC, i.e. Central tax + State or Union Territory tax +Integrated tax);
- the ***balance in the electronic credit ledger*** of the applicant at the ***end of the tax period*** for which the refund claim is being filed ***after the return in Form GSTR-3B for the said period has been filed***; and
- the ***balance in the electronic credit ledger*** of the applicant at the time of filing the refund application.

1.21 - Sequence of debit from electronic credit ledger

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

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

1.22 - Cases where refund of ITC is not allowed

The refund of ITC is not allowed when –

- goods ***exported*** out of India are ***subjected to export duty*** or
- if the ***supplier*** of goods or services or both a***vails of drawback in respect of CGST or claims refund of the IGST paid*** on such supplies.

Thus, if a supplier claims refund of accumulated ITC in case of zero- rated supplies without payment of tax, he ca***n avail drawback of only basic customs duty and cannot claim drawback of any of the taxes*** under GST (Central Tax, Integrated Tax, State/Union Territory Tax).

It is further clarified that ***refund*** of eligible credit on account of ***State tax shall be available*** even if the ***supplier has availed of drawback in respect of central tax***.

1.23 - Refund in case of export of goods on payment of IGST

We know that the goods can be exported with or without payment of GST. We have discussed the export without payment of GST earlier in detail and now we shall discuss some additional points in case of exports on payment of IGST.

Application for refund –

The ***shipping bill or bill of export*** filed by the exporter of goods shall be deemed to be an application for refund and the tax payer is not required to file separate refund application in this case.

However, such application shall be ***deemed to have been filed only when*** –

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- the person ***in charge of the conveyance*** carrying the export goods duly ***files a departure manifest***, or
- an ***export manifest or an export report*** is filed covering the number and the date of shipping bills or bills of export; and
- the applicant has furnished a ***valid return*** in Form GSTR-3 or Form GSTR-3B.

Further procedure is as follows –

- ***GST portal shares the details*** of the relevant export invoices in respect of export of goods contained in Form GSTR-1 ***with the system designated by the Customs viz. ICEGATE***.
- The said system shall ***electronically transmit a confirmation*** to the common portal that the ***goods covered by the said invoices have been exported*** out of India.
- However, where the ***date*** for furnishing the details of outward supplies in Form GSTR-1 for a tax period ***has been extended***, the supplier shall furnish the information relating to exports as specified in Table 6A of Form GSTR-1 ***after the return in Form GSTR-3B has been furnished***.
- The said details shall be ***transmitted electronically by the common portal*** to the system designated by the Customs.

- Further, such information furnished in Table 6A shall be ***auto-populated in Form GSTR-1*** for the said tax period.
- Upon the receipt of the information regarding the furnishing of a valid return, ICEGATE system designated by the Customs or proper officer of Customs, shall ***process the claim of refund*** in respect of export of goods.
- An ***amount equal to the IGST*** paid in respect of each shipping bill or bill of export shall be ***electronically credited*** to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

1.24 - Additional conditions for refund of IGST in case of exports –

Person claiming refund of IGST paid on export of goods or services ***should not*** have –

- benefit of supply of goods to ***merchant exporters*** at the concessional rate of 0.1% has been availed, or
- the ***benefit of exemption*** from IGST and Compensation Cess in respect of goods imported by EOU or for goods imported under Advance Authorisation has been availed.

1.25 - Recovery of refund on export of goods where export proceeds are not realized within stipulated time

This rule is in line with the ***regulations of FEMA*** which specify that the ***sale proceeds for export*** shall be realised in India within a specified time.

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Thus, it is ***applicable*** on applicant who has claimed refund of either unutilised ITC or IGST on ***export of goods.***

The points to be noted here are –

- If the sale proceeds are not realised in India within the period allowed under the FEMA, the person to whom the refund has been made shall ***deposit the amount so refunded***, to the extent of non-realisation of sale proceeds.
- The aforesaid amount shall be deposited along with applicable interest within ***30 days*** of the expiry of the said period or the extended period, as the case may be.
- In case of ***failure to do so***, the amount refunded shall be ***recovered*** in accordance with the ***provisions of sections 73 or 74***, as the case may be.
- However, if ***the RBI writes off the requirement of realisation of sale proceeds*** on merits, the ***refund*** paid to the applicant ***shall not be recovered***.
- The amount shall be refunded back to the applicant if the sale proceeds are realised and the applicant ***produces evidence*** about such realisation ***within a period of 3 months from the date of realisation*** of sale proceeds.
- However, the sale proceeds shall be ***realised within such extended period*** as ***permitted by RBI*** and the amount refunded back shall be restricted to the amount of sale proceeds realised.

1.26 - Minimum refund claim

- The minimum amount to be claimed as refund is ***Rs. 1000***.
- The limit of Rs. 1,000 shall ***apply for each tax head separately*** and not cumulatively.
- The limit would ***not apply*** in cases of ***refund of excess balance in the electronic cash ledger***.

1.27 - Refund to the government of Bhutan in case of exports to Bhutan

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

1.28 - Refund in case of goods taken out of India

It may be possible that the goods may be taken out of India for the purpose of exhibition or for any other reason. The ***activity of sending or taking specified goods out of India is not a zero-rated supply***. Thus, the sender of goods ***cannot claim any refund***.

However, the ***supply*** would be ***deemed to have taken place*** –

- on the ***date of expiry of 6 months*** from the date of removal, if the specified goods are ***neither sold nor brought back*** within the said period; or
- on the ***date of sale***, in respect of such quantity of specified goods which have been ***sold abroad*** within the specified period of ***6 months***.

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Thus, the ***sender can prefer refund*** claim even when the specified goods were sent or taken out of India ***without execution of a bond or LUT, if he is otherwise eligible for refund*** as per the provisions in respect of zero-rated supply of goods after he has issued the tax invoice on the dates.

2. REFUND TO UN BODIES, EMBASSIES, ETC. - SECTION 55

2.1 - Provisions covered

The section enables certain specified people to ***claim refund of taxes*** paid on the ***notified inward supplies of goods or services*** or both received by them.

2.2 - Persons covered under Section 55

The persons or organisation covered here are –

- any ***specialised agency*** of the United Nations Organisation;
- any ***Multilateral Financial Institution and Organisation*** notified under the United Nations (Privileges and Immunities) Act, 1947;
- ***United Nations*** or a specified international organization;

Note –

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

- ***Foreign diplomatic mission or consular*** post in India or ***diplomatic agents or career consular officers*** posted therein.
- ***Consulate or Embassy*** of foreign countries; and
- any other person or class of persons as may be specified in this behalf

2.3 - Special provision

- ***Canteen Stores Department (CSD)*** under the Ministry of Defense is also notified under Section 55.
- However, it shall be ***entitled to claim a refund of 50%*** of the applicable CGST or IGST paid by it on all inward supplies of goods received by it for the purposes of ***subsequent supply*** of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD.

2.4 - Process for claiming refund

- An application for refund shall be made in the prescribed form.
- Such application shall me made ***once in every quarter***.
- A ***statement of the inward supplies*** of goods or services or both shall be filed in ***Form GSTR-11.***

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

2.5 - Time limit for filing claim

The application for such refund shall be made ***once in every quarter*** but ***before the expiry of 2 years*** from the last day of the quarter in which such supply was received.

2.6 - Conditions to be satisfied

The conditions to be satisfied to be eligible for refund are –

- The ***inward supplies*** of goods or services or both were ***received from a registered person against a tax invoice***.
- ***Name*** and ***GSTIN*** or ***UIN*** of the applicant is mentioned ***in the tax invoice***.
- Such other restrictions or conditions as may be specified in the notification are satisfied.
- The provisions of rule 92, as discussed earlier in this chapter shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

2.7 - Inconsistency of provisions with the treaty

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

3. REFUND OF TAXES TO THE RETAIL OUTLETS ESTABLISHED IN DEPARTURE AREA OF AN INTERNATIONAL AIRPORT BEYOND IMMIGRATION COUNTERS MAKING TAX FREE SUPPLY TO AN OUTGOING INTERNATIONAL TOURIST -RULE 95A

3.1 - Persons covered

Retail outlet established in departure area of an international airport beyond the immigration counters ***supplying indigenous goods to an outgoing international tourist who is leaving India*** are covered under rule 95A.

However, such outlets must be ***registered under GST*** and ***hold a valid GSTIN***.

Note –
The ***'outgoing international tourist'*** (also referred as "eligible passengers") shall mean a person ***not normally resident in India***, who enters India for a ***stay of not more than 6 months*** for legitimate non- immigrant purposes.

3.2 - Types of retail outlets at international airports

1. ***Duty Free Shops (DFS):***

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   DFS are point of sale for goods sourced from a warehoused licensed under Section 58A of the Customs Act, 1962 and duty paid indigenous goods.

2. ***Duty Paid Shops (DPS):***

   DPS retail duty paid indigenous goods.

3.3 - Availability of refund

- The outlets referred above can ***claim refund of tax paid by it on inward supply*** of such ***goods***.
- All indigenous goods would have to be procured by such DFS or DPS ***on payment of applicable GST*** when procured from the domestic market.
- It is clarified that the refund to be granted to retail outlets is ***not on account of the accumulated input tax credit*** but refund is ***based on the invoices of the inward supplies*** of indigenous goods received by them.
- Since the ***supply made by such retail outlets is exempt***, they will ***not be eligible for ITC*** of taxes paid on such inward supplies and the same will have to be reversed in accordance with the relevant provisions.
- Also, ***no refund of tax paid on input services***, if any, will be granted to the retail outlets.

3.4 - Process for refund

- Retail outlet shall furnish the ***application*** for refund claim in prescribed form.
- Such application can be furnished on a ***monthly or quarterly basis***.
- It shall consist of ***self-certified compiled information of invoices*** issued for the supply made during the month or the quarter, as the case may be, along with ***concerned purchase invoice***.

3.5 - Conditions for claiming refund

The conditions to be fulfilled for claiming refund are –

- The ***inward supplies*** of goods were received by the said retail outlet ***from a registered person against a tax invoice***.
- The said goods were ***supplied*** by the said retail outlet ***to an outgoing international tourist against foreign exchange***.
- The goods must have been supplied ***without charging any tax***.
- ***Name and GSTIN*** of the retail outlet are mentioned in the ***tax invoice*** for the inward supply.
- Such other restrictions or conditions, as may be specified, are satisfied.

4. INTEREST ON DELAYED REFUND - SECTION 56

4.1 - Conditions leading to payment of interest

1FIN by IndigoLearn

As per the provisions of the Act, the amount shall be refunded to the applicant within a period of ***60 days*** from the date of application.

If the amount is ***not refunded within 60 days***, the interest shall be ***payable on such amount after the expiry of 60 days*** (i.e., from 61st day) ***till the date of payment***.

4.2 - Interest rate

- Where any claim of refund arises from an ***order*** passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court, the interest rate shall be ***9%.***
- In any other case, the rate shall be ***6%.***

4.3 - Order

- Where any interest is due and payable to the applicant, the proper officer shall ***make an order along with a payment order*** in prescribed form.
- Such order shall ***specify*** –
    - the ***amount of refund*** which is ***delayed***,
    - the ***period of delay*** for which interest is payable and
    - the ***amount of interest*** payable.

- Such interest shall be ***electronically credited*** to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.
- The period of delay beyond 60 days for which interest is payable shall not include:
    - Any period beyond 15 days of receipt of notice in RFD 08, which the applicant takes to reply in GST RFD 09 or submit additional documents or reply.
    - Any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited

5. CONSUMER WELFARE FUND - SECTION 57 AND 58

5.1 - Amount credited to consumer welfare fund

The amount credited to the fund are –

- an amount ***equivalent to 50%*** of the ***amount of IGST and compensation cess*** determined under section 54 for refund (which is not payable to the applicant).
- any income from investment of the amount credited to the Fund; and
- such other monies received by it.

5.2 - Amount debited to consumer welfare fund

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The amount debited from the fund are –

- Any amount which was credited to the Consumer Welfare Fund but is ***ordered or directed as payable to any claimant*** by orders of the proper officer, Appellate Authority or Appellate Tribunal or Court shall be paid from the Fund.
- All sums credited to the Consumer Welfare Fund shall be ***utilized by the Government for the welfare of the consumers i***n such manner as may be prescribed.
- The Government shall, by an order, ***constitute a Standing Committee*** who shall make ***recommendations for proper utilisation*** of the money credited to the Consumer Welfare Fund for welfare of the consumers.

6. REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA - SECTION 15 OF IGST ACT

- The ***integrated tax*** paid by tourist leaving India on any supply of goods taken out of India by him shall be ***refunded*** in such manner and subject to such conditions and safeguards as may be prescribed.
- The term '***tourist***' means a person ***not normally resident in India*** who ***enters India for a stay of not more than 6 months*** for legitimate non- immigrant purposes.

Points to be Noted:

- Exporters who imported goods without paying IGST and Compensation Cess under the relevant notifications can now regularize their situation by paying the deferred IGST and Compensation Cess along with interest. After this, their IGST refunds on exports will not be seen as violating Rule 96(10), provided they complete the reassessment of the Bill of Entry through Customs

ILLUSTRATIONS

Illustration 1

An international trade exhibition is going to be held in United States of America in January. Aayaat Niryat Export House (ANEH) has participated in it. It intends to send 100 units of taxable goods manufactured by it to USA for display in the said exhibition.

ANEH is of the view that the activity of sending the goods out of India for exhibition is a zero-rated supply. However, its tax advisor does not concur with its view. Examine whether the view of ANEH is correct.

Assuming that ANEH could not sell any goods at the exhibition and brings back entire 100 units to India (i) in February, (ii) in August,

Discuss the requirement to issue invoice, if any, in each of the above independent cases.

Would your answer be different if ANEH sells an aggregate of 65 units of the taxable goods in USA exhibition on different dates in January and remaining 35 units are brought back on 31st January. The tax advisor of ANEH advises ANEH that the export of 65 units qualify as zero-rated supply and it should apply for refund of the unutilized ITC in respect of the same.

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Examine the technical veracity of the tax advisor's advice.

Illustration 2

Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017.

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

S.No.	Particulars	Amount (₹)
(i)	Export of product 'A' to UK for $ 10,000. Assessable value under customs in Indian rupees. [Export duty is levied on product 'A' at the time of exports]	7,00,000
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%] *not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii) of the CGST Act, 2017	10,00,000

(iii)	Supply of goods to Export Oriented Unit [excluding tax @ 18%] [ITC has been claimed by the recipient]	5,00,000
(iv)	Export of exempt supplies of goods	6,00,000

Illustration 3

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

Products	Turnover* (₹)	Output GST Rates	ITC availed	Input GST Rates
A	5,00,000	5%	54,000	18%
B	3,50,000	5%	54,000	18%
C	1,00,000	18%	10,000	18%

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

Illustration 4

1FIN by IndigoLearn

With reference to section 54(3) of the CGST Act, 2017, mention the cases where refund of unutilised input tax credit is allowed.

Illustration 5

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

18. JOB WORK

Contents

- Understanding the meaning of Job Work.
- Understanding the conditions and provisions applicable in case of job work.

1. MEANING OF JOB WORK

As per Section 2(68), 'Job work' means **any treatment or process** undertaken by a person **on goods belonging to another registered person** and the expression 'job worker' shall be construed accordingly.

In simple terms, when a person sends input and capital goods to another person for the purpose of carrying out some process and returning the processed goods back, it can be termed as job work.

2. JOB WORK PROCEDURE – SECTION 143

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2.1 - Movement of goods without payment of GST

Section 143 provides that the ***inputs or capital goods can be sent*** from the place of business of the principal to the place of job worker ***without payment of tax***.

Similarly, the ***processed goods can be sent*** from the place of the job worker to the place of business of the principal ***without payment of tax***.

However, such goods need to be removed under ***intimation to proper officer and subject to certain conditions.***

2.2 - Supply of goods from the place of business of the job worker

For the ease of doing business, the goods may be ***directly supplied from the place of job worker to the place of business of the purchaser*** or exported out of India, as the case may be.

However, such ***supply can be done*** from the place of business of the job worker ***only if*** –

- the ***job worker is registered*** under Section 25, or
- where the principal is ***engaged in the supply of notified goods***, or
- in case of ***unregistered job workers***, the ***place of business of the job worker*** is ***declared as the additional place of business*** by the principal.

However, it must be noted that the above supply of goods will be ***regarded as supply by the principal*** and not by the job worker. Resultantly, ***the time, value and place of supply*** would have to be

determined in the hands of the principal irrespective of the location of the job worker's place of business.

Example –
The principal is located in Maharashtra and the job worker is located in Gujarat. The goods are supplied to the trader located in Gujarat.
In this case, though the movement of goods is from Gujarat to Gujarat, still IGST will be levied as the principal is in different state.

2.3 - Time limit

In case of inputs –

- The inputs sent to the job worker shall be ***brought back*** to the place of business of the principal ***or supplied***, as the case may be, ***within a period of 1 year***.
- Such period of 1 year shall be calculated ***from the day when they are sent out***.
- The above period may be ***extended*** by a ***further period of 1 year*** by the ***Commissioner***, on sufficient cause being shown.

In case of capital goods –

- The capital goods sent to the job worker shall be ***brought back*** to the place of business of the principal ***or supplied***, as the case may be, ***within a period of 3 years***.
- Such period of 3 years shall be calculated ***from the day when they are sent out***.
- The above period may be ***extended*** by a ***further period of 2 years*** by the ***Commissioner***, on sufficient cause being shown.

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Note –
If the principal directs the supplier of the goods to ***send them directly to the place of the job worker***, then in such case the ***time limit*** shall be calculated from ***the date of receipt of the goods by the job worker.***

Exception –
The above time period of 1 year or 3 years, as the case may be, shall ***not be applied*** to ***moulds and dies, jigs and fixtures, or tools***.

2.4 - Repercussions of not following the time limit

If the inputs or capital goods are not sent back or supplied, as the case may be, within the time limits mentioned above, then –

- it shall be ***deemed*** that such inputs or capital goods had been ***supplied by the principal to the job worker.***
- Such supply shall be deemed to be taken place ***on the day when the said inputs or capital goods were sent out.***
- The supply shall be ***declared in GSTR-1*** and the principal shall be liable to pay the tax along with interest.

2.5 - Maintenance of accounts

The responsibility of keeping proper accounts of inputs and capital goods shall lie with the principal.

2.6 - Supply of waste or scrap

Any waste and scrap generated during the job work may be supplied by the –

- ***job worker directly*** from his place of business on payment of tax, ***if such job worker is registered***, or
- by the ***principal***, if the ***job worker is not registered***.

The ***above stated time limits and other provisions*** shall ***not apply*** in case of waste or scrap.

3. TAKING INPUT CREDIT IN RESPECT OF INPUTS AND CAPITAL GOODS SENT OUT FOR JOB WORK - SECTION 19

As per the provisions of eligibility for claiming ITC as per Section 16, one of the pre-conditions is the receipt of the goods.

However, the principal may send the goods to the place of job worker directly from the place of business of the supplier. In this case, the goods are not received by the principal and condition of Section 16 is not met.

However, Section 19 clarifies that the principal is eligible to take credit on the inputs or capital goods sent directly to the place of job worker.

4. CONDITIONS AND RESTRICTIONS IN RESPECT OF INPUTS AND CAPITAL GOODS SENT TO THE JOB WORKER - RULE 45

4.1 - Issue of delivery challan

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Since the movement of goods from the principal to the job worker does not amount to supply, hence tax invoice cannot be issued for the same. Instead, the principal has to issue the delivery challan during the movement of goods.

The points to be noted here are –

- The delivery challan has to be ***issued by the principal*** when –
  - the goods are sent from the ***place of business of the principal to the place of job worker*** or
  - the goods are sent to the place of the job worker ***directly form the place of the supplier***.
- The delivery challan may be issued by the ***principal or the job worker*** when the goods are sent from the ***place of one job worker to another job worker***.
- The challan ***issued by the principal*** may be ***endorsed by the job worker*** indicating the quantity and description of goods when –
  - goods are sent by ***one job worker to another*** or
  - goods are ***returned*** to the principal

  However, the endorsement of the original challan can be done ***only when the total quantity of goods is sent*** and not when the goods are sent in piecemeal.

- The challan endorsed by the job worker can be ***further endorsed*** indicating the quantity and description of goods when –
    - goods are sent by ***one job worker to another*** or
    - goods are ***returned*** to the principal

  However, the endorsement of the original challan can be done ***only when the total quantity of goods is sent*** and not when the goods are sent in piecemeal.

4.2 - Contents of delivery challan

The delivery challan shall be ***serially numbered*** with up to ***16 characters*** and shall contain the following details –

- date and number of the delivery challan;
- name, address and GSTIN of the consigner, if registered;
- name, address and GSTIN or Unique Identity Number of the consignee, if registered;
- HSN code and description of goods;
- quantity (provisional, where the exact quantity being supplied is not known);
- taxable value;
- tax rate and tax amount – central tax, State tax, integrated tax, Union territory
- tax or cess, where the transportation is for supply to the consignee;
- place of supply, in case of inter-State movement; and
- signature

4.3 - Copies of delivery challan

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- The principal shall prepare the delivery challan ***in triplicate***.
- ***2 copies*** of the challan may be ***sent to the job worker*** along with the goods.
- The ***job worker*** should ***send one copy*** of the said delivery challan along with the goods, ***while returning them*** to the principal.

4.4 - Filing of ITC-04

- The Form ITC-04 is required to ***filed by the principal***.
- The form shall contain ***details of the delivery challan*** in respect of the ***goods dispatched to the job worker*** and ***goods received back*** from the job worker.
- Such form shall be ***filed in the following manner*** within the following respective ***due dates.***

Aggregate turnover of principal during preceding F.Y.	Form GST ITC-04 to be filed on	Due date(s) for filing Form GST ITC-04
Up to Rs. 5 Crore	Annual Basis	25th April
Greater than Rs. 5 Crore	Half-yearly Basis	25th October & 25th April

- This period can be ***extended*** by the Commissioner or the Commissioner of SGST or UTGST.
- The Form GST ITC-04 will ***serve as the intimation*** as envisaged under section 143.

5. ISSUE OF E-WAY BILL

- E-way bill shall be generated ***either by the principal or by the registered job worker***.
- If the ***job worker is unregistered***, the e-way bill shall be ***generated by the principal***.
- Where goods are sent by a ***principal located in one State*** or Union territory to a ***job worker located in any other State*** or Union territory, the E-way bill shall be generated ***irrespective of the value of the consignment***.

ILLUSTRATIONS

Illustration 1

Under what circumstances, can the principal directly supply goods from the premises of Job worker without declaring the premises of Job worker as his additional place of business?

Illustration 2

Who is responsible for the maintenance of proper accounts related to Job work?

Illustration 3

What happens when the inputs or Capital goods are not received back or supplied from the place of business of job worker within prescribed time period?

Illustration 4

Genie Engineers had a mould delivered directly to a job worker from the supplier for making certain precision parts for use in the factory of Genie
Engineers. As per agreement, the mould was to remain with the job worker as long as work was being sent to him.
After four years a departmental audit team that visited the job worker noticed the mould and traced it to Genie Engineers. GST was demanded from Genie Engineers for taking ITC without receiving the mould and furthermore for not bringing the mould back after three years of delivery to the job worker. How should they respond to this?

1FIN by indigolearn

19. INSPECTION, SEARCH & SEIZURE

Contents

- Understanding the meaning of Inspection, Search & seizure.
- Understanding the legislative power of arrest.
- Knowledge of procedural requirements.

1. IMPORTANT TERMS

1.1 – Inspection v/s Search

Basis	*Inspection*	*Search*
Coverage	Inspection is a ***lighter*** term.	Search is an ***extensive*** term.
Seizure	Inspection ***do not lead*** to seizure of goods or documents.	Search can ***lead*** to seizure of goods or documents.
Document needed	Inspection can be conducted with a ***written authorisation*** received from any officer not below the rank of Joint Commissioner.	Search can be conducted with a ***search warrant*** received from any officer not below the rank of Joint Commissioner.

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1.2 – Detention v/s Seizure v/s Confiscation

Basis	*Detention*	*Seizure*	*Confiscation*
Takeover of goods	There is ***no physical takeover*** of the goods.	Goods are ***taken over*** by the officer.	Goods are ***taken over*** by the officer.
Ownership of goods	Ownership is ***retained*** with the owner.	Ownership is ***retained*** with the owner.	Ownership is ***passed on*** to the Government.

2. POWER OF INSPECTION, SEARCH AND SEIZURE – SECTION 67

2.1 – In what cases "Inspection" can be done?

Inspection can be done when –

a. A ***Taxable person*** has

- Suppressed any transaction relating to ***supply of goods or services*** or both
- Suppressed ***stock of goods*** in hand
- Claimed ***excess input tax credit***
- ***Contravened*** any ***provisions*** of the Act or rules to evade tax

b. When any person engaged in –

- Business of ***transporting goods***, or
- Is an ***owner or operator*** of a ***warehouse***, or
- Is an ***owner or operator*** of a ***godown***, or
- any ***other place***

is keeping ***goods*** which have ***escaped payment of tax*** or has kept his accounts or goods in such a manner as is ***likely to cause evasion of tax*** payable under this Act.

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Thus, the inspection can be carried out at the place of business of taxable person or any other place where the goods or books of accounts are kept.

2.2 - Circumstances leading to Search and seizure

Search and seizure can be conducted by the proper officer when ***any goods or documents or books or things*** which may be useful in the proceedings are ***secreted and are liable to confiscation***.

As per ***section 130***, goods become ***liable to confiscation*** when any person does the following –

- ***supplies or receives any goods*** in ***contravention*** of any of the provisions of this Act or rules made thereunder ***leading to evasion of tax;***
- does ***not account for any goods*** on which he is liable to pay tax under this Act;
- ***supplies any goods*** liable to tax under this Act ***without having applied for the registration;***
- ***contravenes*** any of the ***provisions*** of the CGST Act or rules made thereunder with intent to evade payment of tax.

2.3 - Provisions in case of seizure of goods

- When it is ***not practicable to seize*** any such goods, the officer may ***detain the goods*** i.e. serve on the owner or the custodian of the goods an ***order*** that he shall ***not remove, part with, or otherwise deal with*** the goods ***except with the previous permission*** of such officer.
- The government may ***notify*** the ***manner of disposal of goods*** when –
    - goods are ***perishable*** in nature, or
    - goods are ***hazardous*** in nature, or
    - goods gets ***depreciated*** in the value with the passage of time, or
    - when there is ***constraints of storage space,*** or
    - any other relevant considerations.

    The officer shall ***prepare an inventory*** of such goods.
- The seized goods shall be ***released*** on a ***provisional basis*** upon –
    - execution of a ***bond*** and furnishing of a ***security***, as may be prescribed, or
    - on ***payment*** of applicable ***tax***, ***interest and penalty*** payable
- Where any goods are seized and ***no notice*** in respect thereof is ***given within 6 months of the seizure*** of the goods, the goods shall be ***returned*** to the person from whose possession they were seized.
- The above period of 6 months may, on sufficient cause being shown, can be ***extended*** by the proper officer for a further period not exceeding ***6 months***.

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2.4 - Provisions in case of seizure of books, documents or things

- The ***documents or books or things*** so seized shall be ***retained*** by the officer only for ***so long as may be necessary*** for their examination and for any inquiry or proceedings under this Act.
- The documents, books or things which have ***not been relied upon for the issue of notice***, shall be ***returned*** to such person ***within a period not exceeding 30 days*** of the issue of the said notice.
- The person from whose custody any documents are seized shall be ***entitled to make copies*** thereof or ***take extracts*** therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf.
- However, making copies or taking extracts can be ***denied*** if the proper officer thinks that it will ***prejudicially affect the investigation***.

2.5 - Who can carry out inspection, search or seizure?

- Inspection, search or seizure can be carried out by the officer ***not below the rank of Joint Commissioner***.
- He must have ***reason to believe*** that the necessary circumstances (as explained above) are there to carry out inspection, search or seizure.

2.6 - Powers of the officer

- The officer shall have the ***power to seal or break open the door*** of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed.
- However, the above ***power shall be exercised only*** when the ***access*** to such premises, almirah, electronic devices, box or receptacle ***is denied***.
- The ***provisions of the Code of Criminal Procedure, 1973***, relating to search and seizure shall be applicable.

2.7 - Conditions to be followed during search

- Search can be carried out only with a ***valid search warrant*** issued by the proper officer.
- If the search is conducted at the ***place of residence***, the team must have a ***lady officer***.
- The officers should ***disclose their identity*** by showing their identity cards to the person in-charge of the premises before starting the search.
- The ***search warrant should be executed*** before the start of the search by showing the same to the person in-charge of the premises and ***his signature should be taken*** on the body of the search warrant in token of having seen the same.
- The search should be made in the ***presence of at least two independent witnesses*** of the locality. If no such inhabitants are available /willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.

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- The ***signatures of at least two witnesses*** should also be taken on the body of the search warrant.
- Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should ***offer themselves for their personal search to the person in-charge*** of the premises being searched. Similarly, after the completion of search all the officers and the witnesses should again offer themselves for their personal search.
- A ***Panchnama/ Mahazar*** of the proceedings of the search should necessarily be prepared on the spot.
- A ***list of all goods***, ***documents*** recovered and seized/ detained should be prepared and annexed to the Panchnama/ Mahazar.
- The Panchnama/ Mahazar and the list of goods and documents seized/ detained should be ***signed by the witnesses***, ***the in-charge/ owner*** of the premises before whom the search is conducted and also ***by the officers duly authorized*** for conducting the search.
- After the search is over, the ***search warrant*** should be ***returned in original to the issuing officer with a report*** regarding the outcome of the search. The names of the officers who participated in the search may also be written on the reverse of the search warrant.
- The issuing authority of search warrant should ***maintain register of records*** of search warrant issued and returned and used search warrants should be kept in records.

- A ***copy of the Panchnama / Mahazar along with its annexure*** should be ***given to the person incharge/ owner*** of the premises being searched under acknowledgement.

2.8 - Contents of search warrant

Search warrant is a ***written authority to conduct search***. Search Warrant should contain the following details –

- the ***violation*** under the Act,
- the ***premise*** to be searched,
- the ***name and designation*** of the ***person authorized*** for search,
- the ***name of the issuing officer*** with full designation along with his round seal,
- ***date and place*** of issue,
- ***serial number*** of the search warrant,
- ***period of validity*** i.e. a day or two days etc.

3. INSPECTION OF GOODS IN MOVEMENT - SECTION 68

- Inspection can also be carried out of a conveyance, carrying a consignment of value exceeding specified limit.
- The ***person-in-charge*** of the conveyance has to ***produce prescribed documents/ devices*** for verification and allow inspection.
- E- way Bill has been prescribed for the said purpose.
- Inspection during transit can be caried out even ***without authorization of Joint Commissioner***.

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4. POWER TO ARREST - SECTION 69

4.1 - Cognizable v/s Non – cognizable offence

Basis	Cognizable offence	Non - Cognizable offence
Nature	They are ***serious*** in nature.	They are ***less serious*** in nature.
Need of warrant	The police officer has the authority to ***make an arrest without a warrant***.	The police officer ***does not have*** the authority to make an arrest without a warrant.
Investigation	The officer can ***start*** an investigation ***with or without the permission*** of a court.	The officer can ***start*** an investigation only ***with the permission*** of a court.
Applicability in GST	The quantum of offence ***exceeds Rs. 5 crores.***	The quantum of offence ***is less than Rs. 5 crores.***

4.2 - Punishable offences under Section 69

- As per Section 69, the power of arrest shall be applicable in the following circumstances –

- Any goods or services or both are supplied ***without issue of any invoice*** with the intention to evade tax
- Any ***invoice is issued without supply*** of goods or services or both leading to ***wrongful availment or utilisation*** of input tax credit or refund of tax
- Input tax credit is availed using the invoice referred in above point or ***fraudulently availed*** without any invoice or bill
- An amount is ***collected as tax*** but the same is not paid to the Government within a ***period of 3 months*** from the date on which such payment becomes due

When the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken –

- ***Exceeds Rs. 2 crores but less than Rs. 5 crore*** - imprisonment for a term which may extend to ***3 years*** and ***fine***, and if
- ***Exceeds Rs. 5 crore*** - imprisonment for a term which may extend to ***5 years*** and ***fine***

1FIN by Indigo Learn

However, if any person is ***convicted for the second time***, he shall be punishable for the second and for every subsequent offence with ***imprisonment*** for a term which may extend to ***5 years*** and with ***fine***, irrespective of the amount involved.

4.3 - Who has the power to arrest?

- The power to arrest lies with the ***Commissioner***.
- The commissioner must have ***reasons to believe*** that any offence (mentioned above) has been carried out.
- He may ***authorise*** any officer to arrest the person who has committed the offence.

4.4 - Rights of the person in case of cognizable offence

When a person is arrested for a cognizable offence (i.e. quantum of offence exceeds Rs. 5 crores), he has the following rights –

- The officer authorised to arrest the person shall inform such person of the ***grounds of arrest***.
- He must be ***produced before a Magistrate within 24 hours*** (excluding the journey time from place of arrest to the Magistrate's court).
- The arrest must be in accordance with the provisions of the ***Code of Criminal Procedure, 1973*** relating to arrest.

4.5 - Rights of the person in case of non - cognizable offence

When a person is arrested for a non - cognizable offence (i.e. quantum of offence is less than Rs. 5 crores), he has the following rights –

- The person shall be ***admitted to bail***.
- In ***default of bail***, he shall be ***forwarded*** to the ***custody of the Magistrate***.
- For the purpose of ***releasing an arrested person*** on bail or otherwise, the ***Deputy Commissioner or the Assistant Commissioner*** shall, have the ***same powers*** and be subject to the same provisions as an ***officer-in-charge of a police station***.
- The arrest must be in accordance with the provisions of the ***Code of Criminal Procedure,1973*** relating to arrest.

4.6 - General guidelines for arrest

Power to arrest shall be exercised after careful consideration of the facts of the case which may include the following:

- To ***ensure proper investigation*** of the offence.
- To ***prevent*** such person from ***absconding***.
- Master minds or key operators are involved who are ***doing proxy/ benami imports/ exports*** in the name of dummy or non -existent persons/ IECs.
- Where the ***intent*** to ***evade duty*** is ***evident***.
- For ***prevention*** of the possibility of ***tampering with evidence***.
- Where there is a chance of ***intimidating or influencing witnesses***.
- Where the amount of ***evasion of tax*** is ***huge***.

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5. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS - SECTION 70

5.1 - General provisions covered under Section 70

- The officer shall have ***power to summon*** any person whose attendance is considered necessary.
- He can be summoned either to ***give evidence*** or to ***produce a document*** or ***any other thing*** in any inquiry.
- The officer can ***record the statement on oath*** but it shall not form the conclusive evidence. The officer has to find further evidences to justify the case.
- The person who has made a statement may ***modify or even withdraw the statement*** made but the same shall be done in due time.
- The summon shall be dealt in same manner, as provided in the case of a ***civil court*** under the provisions of the ***Code of Civil Procedure, 1908***.
- Every ***inquiry*** shall be ***deemed to be a judicial proceeding*** within the meaning of section 193 and section 228 of the Indian Penal Code.

5.2 - Consequences of non – appearance

A person who is issued summon is ***legally bound*** to attend ***either in person or by an authorized representative***.

He is also bound to ***state the truth*** before the officer who has issued the summon upon any subject which is the subject matter of examination and to ***produce such documents and other things*** as may be required.

The repercussions of not following a summons order shall be as follows –

- If a person ***does not appear*** on the date when summoned without any reasonable justification, he can be ***prosecuted under section 174*** of the ***Indian Penal Code*** (IPC).
- If ***he absconds*** to avoid service of summons, he can be prosecuted under ***section 172 of the IPC***.
- If he ***does not produce the documents or electronic records*** required to be produced, he can be prosecuted under ***section 175 of the IPC***.
- If he ***gives false evidence***, he can be prosecuted under ***section 193*** of the IPC.
- In addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a ***penalty upto Rs. 25,000*** under section 122(3)(d) of the Act.

5.3 - Guidelines for issue of summons

The important guidelines issued by the CBIC are as follows –

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- Summons are to be ***issued as a last resort*** where the person is ***not co-operating***.
- This section should ***not be used for the top management*** and senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking. They should be summoned ***only when there are indications*** in the investigation of ***their involvement in the decision-making process*** which ***led to loss of revenue***.
- The ***language*** of the summons should ***not be harsh*** and legal which causes unnecessary mental stress and embarrassment to the receiver.
- Summons by Superintendents should be issued after obtaining ***prior written permission*** from an ***officer not below the rank of Assistant Commissioner***.
- The ***reasons*** for issuance of summons to be ***recorded in writing***.
- If it is ***not possible*** to obtain such ***prior written permission***, ***oral/ telephonic permission*** from such officer must be obtained and the same should be reduced to writing and intimated to the officer at the earliest opportunity.
- The officer issuing summons should ***submit a report*** or should ***record a brief of the proceedings*** in the case file and submit the same to the officer who had authorized the issuance of summons.

5.4 - Precautions to be followed during issue of summons

The following precautions should generally be observed when summoning a person –

- A summon should ***not be issued*** for appearance ***where it is not justified***. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- Normally, summons should ***not be issued repeatedly***. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- ***Respect the time of appearance*** given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.
- Statements should be ***recorded during office hours***. However, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

6. ACCESS TO BUSINESS PLACES - SECTION 71

6.1 - Power under section 71

- Any officer under this Act, authorised by the proper officer ***not below the rank of Joint Commissioner***, shall have access to any place of business of a registered person.
- The officer can ***inspect*** books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require, for the purposes of ***carrying out any audit, scrutiny, verification and checks*** as may be necessary to ***safeguard the interest of revenue***.

6.2 - Duty of the person in charge

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On demand of the authorised officer or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66, the person in charge shall have the ***responsibility to make available*** –

- such ***records*** as prepared or maintained by the registered person and declared to the officer,
- ***trial balance*** or its equivalent,
- statements of ***annual financial accounts***, duly audited,
- ***cost audit report***, if any, under section 148 of the Companies Act, 2013,
- the ***income-tax audit report***, if any, under section 44AB of the Income-tax Act, 1961, and
- any other relevant record

The documents shall be made available ***within a period of 15 days*** from the day when such demand is made or such further period as may be allowed by the officer, the audit party, the chartered accountant or cost accountant.

Note –

Section 71 differs from Section 67 as the former is more generic in nature whereas the latter talks about some specific situation.

7. OFFICERS TO ASSIST PROPER OFFICERS (SECTION 72)

The following officers have been empowered and are required to assist CGST officers in the execution of CGST Act –

- Police
- Railways
- Customs
- Officers of State/ UT/ Central Government engaged in collection of GST
- Officers of State/ UT/ Central Government engaged in collection of land revenue
- All village officers
- Any other class of officers as may be notified by the Central/State Government.

ILLUSTRATIONS

Illustration 1

Explain the situation in which access to business premises is allowed under section 71. Also, list the records which are to be produced during access to business premises.

Illustration 2

Explain the safeguards provided under section 69 to a person who is placed under arrest.

Illustration 3

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Who can order for carrying out 'inspection' and under what circumstances?

Illustration 4

Who can order for search and seizure under the provisions of the CGST Act?

Illustration 5

Describe the powers that can be exercised by an officer during a valid search.

20. APPEALS & REVISION

Contents

- Understanding authorities for appeal and revision
- Understanding situations in which appeals can be filed with various level of authorities.
- Understanding non-appealable orders.

1. APPEALS TO APPELLATE AUTHORITY – SECTION 107

When any person is ***aggrieved by any decision or order*** passed under this Act (i.e., CGST Act) or SGST Act or UTGST Act ***by an adjudicating authority***, he may appeal to Appellate Authority.

Section 107 contains the details of the provisions with regards to the appeal made to the Appellate authority.

1.1 – Understanding Important terms

Adjudicating authority –

- Adjudicating authority means any ***authority, appointed or authorised to pass any order or decision*** under this Act.
- It shall ***not include*** –
  - Central Board of Indirect Taxes and Customs,
  - Revisional Authority,
  - Authority for Advance Ruling,
  - Appellate Authority for Advance Ruling,
  - Appellate Authority,
  - the Appellate Tribunal and
  - Authority referred to in sub-section (2) of section 171.

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Example –

If the Additional Commissioner has the power to pass the decision under a given Section, the adjudicating authority shall be the Additional Commissioner.

Appellate Authority –

The Appellate Authority for a given case will ***depend upon the adjudicating authority*** who has taken the decision or passed the order.

Adjudicating officer	*Appellate Authority*
Deputy / Assistant Commissioner or Superintendent	Joint Commissioner (Appeals), Additional Commissioner (Appeals) or Commissioner (Appeals)
Joint Commissioner/ Additional Commissioner	Commissioner (Appeals)

1.2 – Application by the taxpayer

- When any person feels that he is ***aggrieved*** by the decision or order of the adjudicating authority, he may file an appeal with the Appellate authority in ***Form GST APL-01*** manually.
- An appeal can also be filed by the department to the Appellate authority in ***Form GST APL-03,*** only if:
  - the Commissioner has so notified, or
  - the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,
- A ***provisional acknowledgement*** is issued on filing the form ***immediately***.
- A ***certified copy of the decision or order appealed against*** shall be submitted ***within 7 days*** of filing the appeal and a ***final acknowledgement*** shall be issued thereafter in FORM GST APL-02.
- The ***date of filing*** the appeal shall be considered as –
  - ***Date of issue of provisional acknowledgement*** – when the certified copy of the decision or order is submitted ***within 7 days*** from the date of filing the FORM GST APL-01.
  - ***Date of issue of final acknowledgement*** – when the certified copy of the decision or order is submitted ***after 7 days*** from the date of filing the FORM GST APL-01.

1.3 - Time period for filing the application by the taxpayer

- The appeal can be filed ***within 3 months*** from the date on which the said ***decision or order is communicated*** to such person.
- The said period can be ***extended by 1 month*** by the Appellate Authority if he is satisfied that the ***appellant was prevented by sufficient cause from presenting the appeal*** within 3 months.

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1.4 - Form for appeal to AA by the aggrieved person (taxpayer) and date of filing appeal

- An appeal is to be filed by aggrieved person to the Appellate Authority in ***Form GST APL-01*** along with the relevant documents. A provisional acknowledgement is issued to the appellant immediately.
- Subsequently, where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in ***Form GST APL-02***. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- However, where the decision/order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order ***within a period of 7 days from the date of filing of Form GST APL-01***. The final acknowledgment, indicating appeal number, shall be ***issued by the Appellate Authority*** or an officer authorised by him in this behalf in Form GST APL- 02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

- Further, where the said self-certified copy of the decision/order is not submitted within a period of 7 days from the date of filing of Form GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

1.5 - Mandatory payment

Before filing the appeal, the taxpayer has to pay –

- amount of ***tax, interest, fine, fee and penalty*** arising from the impugned order, as is ***admitted by him, in full***; and
- a sum equal to ***10% of the remaining amount*** of tax ***in dispute*** arising from the said order for which appeal has been filed.
- However, this 10% of payment shall be ***subject to maximum of Rs. 20 crore CGST, 20 crore SGST and 40 crore in case of IGST***.

Once the above-mentioned amount is paid, ***recovery proceedings*** for the ***balance amount*** shall be ***deemed to be stayed***.

In case of appeal against any penalty order, the pre deposit shall be 10% of such penalty

1.6 - Application by the Commissioner

- The Commissioner can ***call for and examine the record*** of any proceedings in which an adjudicating authority has passed any decision or order for the purpose of ***satisfying himself as to the legality or propriety*** of the said decision or order.
- The Commissioner may ***order any officer subordinate to him*** to apply to the Appellate Authority in ***Form GST APL-03*** for the determination of such points arising out of the said decision or order as may be specified by him.
- A ***certified copy of the decision or order appealed against*** shall be submitted ***within 7 days*** of the filing the application.
- The appeal can be made ***within 6 months*** from the ***date of communication*** of the order.
- The said period can be ***extended by 1 month*** by the Appellate Authority if he is satisfied that the ***appellant was prevented by sufficient cause from presenting the appeal*** within 6 months.

1.7 - Procedure followed by the Appellate authority

- The Appellate Authority shall give an ***opportunity of being heard*** to the appellant.
- The Appellate Authority may ***grant time to the parties*** and ***adjourn the hearing*** of the appeal if sufficient cause is shown at any stage of hearing.
- Such reasons shall be ***recorded in writing***.
- However, ***no such adjournment*** shall be granted ***more than 3 times*** to a party during hearing of the appeal.
- The Appellate Authority may ***allow an appellant to add any ground of appeal*** not specified in the grounds of appeal, if it is satisfied that the ***omission*** of that ground from the grounds of appeal ***was not wilful or unreasonable***.

1.8 - Order by the Appellate authority

- The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, ***confirming, modifying or annulling*** the decision or order appealed against.
- However, the Appellate Authority shall ***not refer the case back to the adjudicating authority*** that passed the said decision or order.
- Where an ***order consist*** of –
    - enhancing any fee or penalty or fine in lieu of confiscation, or
    - confiscating goods of greater value, or
    - reducing the amount of refund or input tax credit,

  such order ***shall not be passed unless*** the appellant has been given a ***reasonable opportunity of showing cause against the proposed order***.
- Where the Appellate Authority is of the ***opinion*** that –
    - tax has not been paid, or
    - tax is short-paid, or
    - erroneously refunded, or
    - where input tax credit has been wrongly availed or utilised,

  the order shall be passed only after giving ***notice to show cause against the proposed order*** and the order shall be ***passed within the time limit specified under section 73 or section 74***.

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- The order of the Appellate authority disposing of the appeal shall be ***in writing*** and shall state –
    - the ***points*** of determination,
    - the ***decision*** thereon, and
    - the ***reasons*** for such decision.

1.9 - Time period for passing the order

- The Appellate Authority shall, where it is possible to do so, hear and decide every appeal ***within 1 year*** from the date on which it is filed.
- However, if the ***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.

1.10 - Communication of the order

- The Appellate Authority shall ***communicate the order*** passed by it to the ***appellant***, ***respondent*** and to the ***adjudicating authority***.
- A copy of order shall be sent to the –
    - jurisdiction ***Commissioner*** or the authority designated by him, and
    - jurisdictional ***Commissioner of State tax*** or Commissioner of Union Territory Tax or an authority designated by him.

2. POWERS OF REVISIONAL AUTHORITY - SECTION 108

Section 108 gives the power to the officers to review the decisions passed by the officer subordinate to them and revise the same. The provisions to be followed for the same are explained below –

2.1 - Revisional authority

The revisional authority for a given case will depend upon the officer who has taken the decision or passed the order.

Decision / Order by	*Revisional Authority*
Deputy / Assistant Commissioner or Superintendent	Joint Commissioner (Appeals), Additional Commissioner (Appeals)
Joint Commissioner/ Additional Commissioner	Principal Commissioner, Commissioner (Appeals)

2.2 - Powers of the Revisional authority

- The Revisional Authority has the ***power to call for and examine the record*** of any proceedings.
- Such power can be exercised by him –
  - on his ***own motion***, or
  - upon ***information received*** by him, or
  - on ***request*** from the Commissioner of State tax or Union Territory.

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- The revisional authority can –
  - ***stay the operation*** of such decision or order for such period as he deems fit, or
  - pass the ***order of enhancing or modifying or annulling*** the said decision or order.
- However, such order shall be passed only when any decision or order passed by the officer subordinate to him is –
  - ***erroneous*** in so far as it is prejudicial to the interest of revenue and
  - is ***illegal*** or ***improper*** or
  - has ***not taken*** certain ***material facts into account***, whether available at the time of issuance of the said order or not or
  - in ***consequence of an observation*** by the Comptroller and Auditor General ***(CAG)*** of India.
- Such decision shall be taken only after giving a ***reasonable opportunity of being heard*** to concerned person.

2.3 - Situations in which the above power cannot be used

The above power cannot be utilised by the Revisional Authority when –

- Any order or decision is ***non-appellable*** as per the provisions of ***Section 121***.
- The order has been ***subject to an appeal*** under section 107, 112, 117 or 118.
- The decision or order was taken ***less than 6 months*** ago.

- The decision or order was taken ***more than 3 years*** ago.
- The order has ***already been taken for revision*** under this section at an earlier stage.
- The order to be revised is a ***revisional order***.

However, the Revisional Authority can still pass an order on ***any point which has not been raised*** and decided in an appeal under section 107, 112, 117 or 118 before AA/ Tribunal/ High Court/ Supreme Court.

The time limit for the same will be ***later of*** –

- expiry of a period of ***1 year*** from the ***date of the order in such appeal*** or
- expiry of a period of ***3 years*** from the ***date of initial order***.

2.4 - Exclusions from time period of 3 years

- When any order by Appellate Tribunal or High court is ***appealed against*** at the High Court or the Supreme Court respectively, the ***time period between the two orders shall be excluded***.

  Example –
  An order is passed by the Appellate Tribunal on 01.01.2020 and the same order was appealed at the High Court. The order of High court was passed on 01.05.2022. In this case, the time period between 01.01.2020 and 01.05.2022 shall be excluded.

- 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.

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3. CONSTITUTION OF THE APPELLATE TRIBUNAL AND BENCHES THEREOF - SECTION 109

The Appellate Tribunal is authorized to hear the cases where the ***order is passed by the Appellate Authority or the Revisional Authority***.

The Ministry of Finance has issued Notification to establish Goods and Services Tax Appellate Tribunal (GSTAT) with effect from September 1, 2023. The Principal Bench of the GSTAT has been constituted at New Delhi and State Benches have been notified in certain locations in all states and UT's. State Benches are established in some circuit locations, and will be operational in such manner as the President may order, based on the number of appeals filed by suppliers.

Time limit for filing appeal to GSTAT by taxpayer is within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal; or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later {Notified date is 1st August 2024}

Following monetary limits have been fixed for filing appeal or application or Special Leave Petition, as the case may be, by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court.

APPELLATE FORUM	MONETARY LIMIT

GSTAT	Rs.20 lakhs
High Court	RS.1 Crore
Supreme Court	RS.2 Crore

Following cases to be taken on merits irrespective of the monetary limits:

1. Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India
2. Where any rules or regulations under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Parent Act.
3. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the Rules made thereunder
4. Where the matter is related to - a. Valuation of goods or services; or b Classification of goods or services; or c Refunds or d. Place of Supply; or e. Any other issue. which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/instruction etc
5. Where strictures/adverse comments have been passed and/or cost hos been imposed against the Government/Deportment or their officers.
6. Any other case or class of cases, where in the opinion of the Board. it is necessary to contest in the interest of justice or revenue.

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3.1 - Benches in the Appellate Tribunal

The Appellate Tribunal shall consist of 2 benches –

1. **Principal Bench**
   - The principal bench shall be ***situated at New Delhi***.
   - The principal bench shall consist of the following ***members*** –
     - President
     - Judicial member
     - Technical Member (State)
     - Technical Member (Centre)
   - Since, one bench will not be enough to hear all the cases, many Regional benches are established. These benches work under principal bench.
   - The Principal Bench shall ***deal with the cases*** where one of the issues relates to ***place of supply*** or in case of Anti Profiteering.
   - If a person is aggreived by the decision of the principal bench, he can appeal to the ***Supreme Court***.
   - Notified cases of appeal to principal bench: cases pending before 2 or more state benches having identical question of law, OIDAR cases, Online money gaming cases and ISD cases.
2. **State Bench**
   - The State bench shall consist of the following ***members*** –
     - Two Judicial Members
     - Technical Member (State)
     - Technical Member (Centre)
   - Since, one bench will not be enough to hear all the cases, many Area benches are established. These benches work under State bench.
   - The State Bench shall ***deal with the cases*** where there is ***no issue related to place of supply***.
   - If a person is aggreived by the decision of the State / Area bench, he can appeal to the ***High Court***.

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3.2 - Hearing by two-member bench

In the ***absence of a Member*** in any Bench due to vacancy or otherwise, any appeal may be ***heard by a Bench of 2 members***.

However, a ***previous approval*** of the President or the State President, as the case may be, is needed.

3.3 - Hearing by single member bench

An appeal can the heard by a single bench if –

- The amount of –
  - 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. 50 Lakhs***, and

- the appeal ***does not involve*** any ***question of law***.
- However, a ***prior approval of the President*** will be needed in such case.
- ***Majority rule in case of difference of opinion***
  - If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing, —
    - ***where the appeal was originally heard by Members of a State Bench***, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;
    - ***where the appeal was originally heard by Members of the Principal Bench***, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

    and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.
- ***Transfer of members/cases for administration efficiency***
  - The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.
  - The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.
  - The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench:
  - However, a Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.
- ***Defect in constitution not to render proceedings invalid***
  - No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal
- **Appeals before Single – member Bench – Rule 110A**
  - It prescribes the procedure for hearing appeals by a Single-Member Bench of the GST Appellate Tribunal.
  - The President of the GST Appellate Tribunal or the Vice-President (if authorised) in respect of any State Bench.

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- The President/Vice-President may act suo motu or on an application by the parties to the appeal.
- They may scrutinise an appeal and transfer it to a Single-Member Bench of the respective State Bench
- Only if the appeal does not involve any question of law.
- It must record reasons in writing and return the appeal for reconsideration by the President/Vice-President.
- It must be verified whether the same issue for the same taxable person (for same or different tax period) has already been decided by a Two-Member Bench.
- The appeal must be heard by such Two-Member Bench (one Judicial + one Technical Member).
- The monetary threshold under section 109(8) is ₹50 lakh and such limit is calculated On a cumulative basis considering tax, ITC, fine, fee or penalty across all issues and tax periods covered in the order under appeal.

3.4 - Member ceases to hold office

When a member of the Bench ceases to hold office, he shall ***not*** be entitled to ***appear, act or plead*** before the Appellate Tribunal.

4. PROCEDURE BEFORE APPELLATE TRIBUNAL - SECTION 111

The Appellate Tribunal shall ***not be bound*** by the procedure laid down in the ***Code of Civil Procedure, 1908***.

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However, it shall be guided by the ***principles of natural justice***.

4.1 - Powers of the Appellate Tribunal

1. 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 –
    - ***summoning*** and enforcing the attendance of any person and ***examining him on oath***;
    - requiring the ***discovery and production*** of documents;
    - receiving ***evidence on affidavits***;
    - requisitioning any ***public record or document*** or a copy of such record or document from any office, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872;
    - issuing commissions for the ***examination of witnesses or documents***;
    - ***dismissing a representation*** for default or deciding it ***exparte***;
    - ***setting aside any order*** of dismissal of any representation for default or any order passed by it ex parte; and
    - any other matter which may be prescribed.
2. Any order made by the Appellate Tribunal may be ***enforced*** by it in the same manner as if it were a ***decree made by a court*** in a suit pending therein.

3. It shall be lawful for the Appellate Tribunal to ***send for execution of its orders*** to the court within the ***local limits of whose jurisdiction*** –
    - the ***registered office*** of the company is situated, in case of a company or
    - the person ***resides or carries on business*** or personally works for gain, in case the order is against a person.
4. All proceedings before the Appellate Tribunal shall be deemed to be ***judicial proceedings*** within the meaning of sections 193 and 228, for the purposes of section 196 of the Indian Penal Code.
5. 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.

5. APPEALS TO APPELLATE TRIBUNAL (SECTION 112)

Appeal to Appellate Tribunal is filed when a ***person is aggrieved*** by the decision taken or order passed by the –

- ***Appellate Authority*** under Section ***107***, or
- ***Revisional Authority*** under Section ***108***.

5.1 - Application by the taxpayer

- When any person feels that he is ***aggrieved*** by the decision or order of the Appellate Authority or Revisional Authority, he may file an appeal with the Appellate Tribunal in ***Form GST APL-05***.
- A ***provisional acknowledgement*** is issued on filing the form.
- A ***certified copy of the decision or order appealed against*** shall be submitted ***within 7 days*** of filing the appeal and a ***final acknowledgement*** shall be issued thereafter in FORM GST APL-02.
- The ***date of filing*** the appeal shall be considered as –
    - ***Date of issue of provisional acknowledgement*** – when the certified copy of the decision or order is submitted ***within 7 days*** from the date of filing the FORM GST APL-01.
    - ***Date of issue of final acknowledgement*** – when the certified copy of the decision or order is submitted ***after 7 days*** from the date of filing the FORM GST APL-01.

5.2 - Time period for filing the application by the taxpayer

- The appeal can be filed ***within 3 months*** from the date on which the said ***decision or order is communicated*** to such person.
- The said period can be ***extended by 3 month*** by the Appellate Tribunal if it is satisfied that the ***appellant was prevented by sufficient cause from presenting the appeal*** within 3 months.

5.3 - Refusal to admit an appeal

The Appellate Tribunal has the power to refuse the appeal if the ***amount*** of –

- tax, or

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- input tax credit involved, or
- the difference in tax or input tax credit involved, or
- the fine, fee or penalty

does ***not exceed Rs. 50,000***.

5.4 - Fees for filing appeal

1. ***Fees for filing of appeal or restoration of appeal*** –
   - ***Rs. 1000 for every Rs. 1 lakh*** of –
     - tax, or
     - input tax credit involved, or
     - the difference in tax or input tax credit involved, or
     - fine, fee or penalty determined in the order appealed against.
   - However, it shall be subject to a ***maximum of Rs. 25,000***. (minimum fee shall be 5000)
2. **For rectification of errors –**

   No fees shall be paid for application made before the Appellate Tribunal for rectification of errors.

5.5 - Mandatory payment

Before filing the appeal, the taxpayer has to pay –

- amount of ***tax, interest, fine, fee and penalty*** arising from the impugned order, as is ***admitted by him***, ***in full***; and 1FIN by IndigoLearn
- a sum equal to ***10% of the remaining amount*** of tax ***in dispute*** (in addition to the amount paid in Section 107) arising from the said order for which appeal has been filed.
- However, this 10% of payment shall be ***subject to maximum of Rs. 20 crore CGST, 20 crore SGST and 40 crore in case of IGST***.
- In case of appeal against penalty order, pre deposit shall be 10% of such penalty.

Once the above-mentioned amount is paid, ***recovery proceedings*** for the ***balance amount*** shall be ***deemed to be stayed***.

5.6 - Application by the Commissioner

- The Commissioner can ***call for and examine the record*** of any proceedings in which an Appellate authority or Revisional authority has passed any decision or order for the purpose of ***satisfying himself as to the legality or propriety*** of the said decision or order.
- The Commissioner may ***order any officer subordinate to him*** to apply to the Appellate Authority in ***Form GST APL-07*** for the determination of such points arising out of the said decision or order as may be specified by him.
- A ***certified copy of the decision or order appealed against*** shall be submitted ***within 7 days*** of the filing the application.
- The appeal can be made ***within 6 months*** from the date on which the ***order has been passed***.

5.7 - Memorandum of cross objections

- The party ***against whom the appeal has been filed*** can file a memorandum of cross objections in ***Form GST APL-06***.
- Such memorandum can be filed ***within 45 days*** of the receipt of the notice for appeal filed.
- The said period can be ***extended further by 45 days*** by the Appellate Tribunal if it is satisfied that the ***appellant was prevented by sufficient cause from presenting the appeal*** within 45 days.

6. ORDER OF THE APPELLATE TRIBUNAL - SECTION 113

6.1 - Procedure followed by the Appellate Tribunal

- The Appellate Tribunal shall give an ***opportunity of being heard*** to both the parties to the appeal.
- The Appellate Tribunal may ***grant time to the parties*** and ***adjourn the hearing*** of the appeal if sufficient cause is shown at any stage of hearing.
- Such reasons shall be ***recorded in writing***.
- However, ***no such adjournment*** shall be granted ***more than 3 times*** to a party during hearing of the appeal.

6.2 - Order by the Appellate Tribunal

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- The Appellate Tribunal shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, ***confirming, modifying or annulling*** the decision or order appealed against.
- The Appellate Tribunal may also ***refer the case back to the Appellate Authority, Revisional Authority or the adjudicating authority*** that passed the said decision or order for a fresh adjudication or decision after taking additional evidence, if necessary.

6.3 - Rectification of the order

- The Appellate Tribunal may ***amend any order*** passed by it so as to ***rectify any error apparent on the face of the record***.
- Such error may be noticed by the Tribunal ***on its own accord***, or is ***brought to its notice*** by the –
  - Commissioner, or
  - Commissioner of State tax or Union territory tax, or
  - other party to the appeal within 3 months from the date of order.
- Where the amendment has an effect of –
  - enhancing an assessment, or
  - reducing the amount of refund or input tax credit, or
  - increasing the liability of the other party,

such rectification ***shall not be done unless*** the party has been given a ***reasonable opportunity of being heard***.

6.4 - Time period for passing the order

The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal ***within 1 year*** from the date on which it is filed.

6.5 - Communication of the order

The Appellate Tribunal shall send a copy of the order to –

- the Appellate Authority or the Revisional Authority, or the original adjudicating authority,
- the appellant and
- the jurisdictional Commissioner or
- the Commissioner of State tax or the Union territory tax

Composition of members in the bench:

Principal bench	State bench
President	2 Judicial members (senior most judicial members is vice president)
Technical member (centre)	Technical member (centre)
Technical member (state)	Technical member (state)

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7. PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE APPELLATE AUTHORITY OR THE APPELLATE TRIBUNAL (RULE 112)

7.1 - General rule

The appellant is normally allowed to ***produce only those evidences***, whether oral or documentary, which have been ***produced in the earlier course of proceedings***, whether with the adjudicating authority or the Appellate Authority, as the case may be.

7.2 - Exceptions to the general rule

The rule has ***exception*** in the circumstances where –

- the earlier authority has ***refused to admit evidence*** which ought to have been admitted; or
- the appellant was ***prevented by sufficient cause*** from producing the ***evidence which he was called upon to produce*** by the earlier authority; or
- the appellant was ***prevented by sufficient cause*** from producing the evidence which is ***relevant to any ground of appeal***; or

- the authority has ***made the order appealed against without giving sufficient opportunity*** to the appellant to adduce evidence relevant to any ground of appeal.

However, the reasons for admission of additional evidence shall be ***recorded in writing***.

7.3 - Right of the adjudicating authority

The Appellate Authority or the Appellate Tribunal shall not take any evidence produced unless the adjudicating authority or an officer authorised in this behalf 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.

7.4 - Power of the Appellate authority or Appellate Tribunal

Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document or the examination of any witness to enable it to dispose of the appeal.

8. INTEREST ON REFUND OF AMOUNT PAID FOR ADMISSION OF APPEAL - SECTION 115

Where the ***mandatory payment*** made by the Appellant under Section 107 or 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 i.e. 6%*** 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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9. APPEARANCE BY AUTHORISED REPRESENTATIVE - SECTION 116

Any person who is required to appear before an officer, or the Appellate Authority or the Appellate Tribunal may appear by an authorised representative.

However, appearance by an authorised representative will ***not be possible*** in cases where personal appearance is necessary ***for examination on oath or affirmation***.

9.1 - Who can be an authorised representative?

Authorised representative can be –

- his ***relative*** or regular ***employee***; or
- an ***advocate*** who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- any ***chartered accountant***, a ***cost accountant*** or a ***company secretary***, who ***holds a certificate of practice*** and who has not been debarred from practice; or
- a ***retired officer*** of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years.

However, such officer shall ***not be entitled*** to appear before any proceedings for a ***period of 1 year*** from the date of his retirement or resignation.

- any person who has been ***authorised to act as a goods and services tax practitioner*** on behalf of the concerned registered person.

9.2 - Who cannot be an authorised representative?

The below mentioned persons are not allowed to be an authorised representative –

- who has been ***dismissed or removed*** from ***Government service***; or
- who is ***convicted of an offence*** connected with any proceedings under any GST Act or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or
- who is found ***guilty of misconduct*** by the prescribed authority;
- who has been ***adjudged as an insolvent***;
- However, the person ***cannot be*** an authorised representative only upto the ***time his insolvency continues***.
- any person who has been disqualified in any other GST act.

10. APPEAL TO HIGH COURT - SECTION 117

10.1 - Cases appealable at High Court

A case can be appealed at high court if – 1FIN by IndigoLearn

- any person (whether taxpayer or the department) is ***aggrieved*** by any ***order passed by the State Bench or Area Benches*** of the Appellate Tribunal, ***and***
- it involves a ***substantial question of law***.

  Note –
  It is to be noted that the ***final fact-finding authority is Appellate Tribunal***. The case can be appealed in the High court only when there is substantial question of law.

10.2 - Time period for filing appeal

An appeal shall be filed ***in Form APL-08*** within a ***period of 180 days*** from the date on which the ***order appealed against is received*** by the aggrieved person.

However, the High Court may entertain an appeal ***after the expiry of the said period*** if it is satisfied that there was ***sufficient cause for not filing*** it within such period.

10.3 - Procedure followed by High court

- Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the ***appeal shall be heard only on the question so formulated***.
- The respondents shall, at the hearing of the appeal, be ***allowed to argue that the case does not involve such question***.

- However, the court has power to ***hear the appeal on any other substantial question of law*** not formulated by it, if it is satisfied that the case involves such question.
- The ***reasons*** for such hearing shall be ***recorded***.
- The High Court may ***determine any issue*** which –
  - has ***not been determined*** by the State Bench or Area Benches; or
  - has been ***wrongly determined*** by the State Bench or Area Benches by reason of a decision on such question of law.
- The provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall apply in the case of appeals under this section.

10.4 - Number of judges

- The appeal shall be heard by a ***Bench of atleast 2 judges*** of the High Court.
- It shall be decided in accordance with the ***opinion of majority*** of Judges, if any.
- Where there is ***no such majority***, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, ***by one or more of the other Judges*** of the High Court and such point shall be decided according to the ***opinion of the majority of the Judges*** who have heard the case ***including those who first heard it***.

11. APPEAL TO SUPREME COURT - SECTION 118

11.1 - Cases appealable at Supreme court

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A case is appealable at the Supreme Court if –

- Any person is aggrieved by the ***order passed*** by the ***National Bench or Regional Benches*** of the Appellate Tribunal; or
- from any judgment or order ***passed by the High Court*** in an appeal made under section 117, on its own motion or on an application made by or on behalf of the party aggrieved, the ***High Court certifies to be a fit one*** for appeal to the Supreme Court.

11.2 - Other provisions

- The ***provisions of the Code of Civil Procedure, 1908***, relating to appeals to the Supreme Court shall apply in the case of appeals under this section.
- The Supreme Court can ***vary, confirm or reverse*** the judgement of the High Court or the Tribunal as the case may be and may award costs.
- It can also remand the matter for ***fresh consideration***.

12. SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL, ETC. - SECTION 119

Sums due to the Government as a result of an order passed by the Appellate Tribunal or the High Court, notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, shall be payable in accordance with the order so passed.

13. APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 120)

Section 120 provides the instances in which the departmental ***officers shall refrain from filing the appeals***. The provisions contained therein are –

- The Board may, on the recommendations of the GST Council, issue orders or instructions or directions ***fixing monetary limits for regulating filing of appeal*** or application by the CGST officer.
- Non-filing of appeal/ application by a CGST officer on account of such monetary limits fixed by the Board shall ***not preclude*** such officer ***from filing appeal or application in any other case*** involving the same or ***similar issues or questions of law***.
- ***No person***, who is a party in application or appeal can ***contend that the CGST Officer has acquiesced in the decision*** on the disputed issue by not filing an appeal or application (on account of monetary limits).
- The Appellate Tribunal or Court hearing such appeal or application shall have ***regard to circumstances for non-filing*** of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

14. NON – APPEALABLE DECISIONS OR ORDERS - SECTION 121

The below mentioned order are non – appealable –

- An order of the Commissioner or other authority empowered to ***direct transfer of proceedings*** from one officer to another officer.
- An order pertaining to the ***seizure or retention*** of books of account, register and other documents.
- An order ***sanctioning prosecution*** under this Act.
- An order passed under ***section 80*** i.e. payment of tax in instalments.

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ILLUSTRATIONS

Illustration 1 (MCQ)

An appeal to the high court can be filed under CGST Act 2017 in the following cases

1. By a person aggrieved by the order passed by State/Area Bench of appellate tribunal
2. By a person aggrieved against the order passed by National/Regional Bench of Appellate Tribunal
3. For matter involving substantial Question of Law
4. All of the Above

Choose the correct option from the following

a. 1 & 2

b. 1 & 3

c. 2 & 3

d. 4

Illustration 2

In an order dated 20.08.20XX issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed a CGST demand of Rs. 280 crores. The company is disputing the entire demand of CGST and wants to know how much pre-deposit it has to make under the CGST Act, 2017 for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, how much pre-deposit it has to make under the CGST Act, 2017 for filing the said appeal?

Illustration 3

With reference to the provisions of section 121 of the CGST Act, 2017, specify the orders against which no appeals can be filed

Illustration 4

Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved related to place of supply. The order of Appellate Tribunal is also in favour of the Department. Mr. A now wants to file an appeal against the decision of the Appellate Tribunal as he feels the stand taken by him is not correct.

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You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal.

Illustration 5 (MCQ)

Rupam wishes to file an appeal to Appellate Tribunal. In which of the following cases, the Appellate Tribunal cannot refuse to admit his appeal as per the GST laws?

i. Amount of tax/ ITC or difference in tax/ difference in ITC involved exceeds Rs. 50,000

ii. Amount of fine, fee or penalty determined by the order exceeds Rs. 50,000

iii. Amount of tax/ ITC or difference in tax/ difference in ITC involved is Rs. 50,000

iv. Amount of fine, fee or penalty determined by the order is Rs. 50,000

v. Amount of tax/ ITC or difference in tax/ difference in ITC involved is less than Rs. 50,000

vi. Amount of fine, fee or penalty determined by the order is less than Rs. 50,000

a) i. and ii.

b) i. and iii.

c) ii. and iv.

d) v. and vi.

Illustration 6

Pursuant to audit conducted by the tax authorities under section 65 of the CGST Act, 2017, a show cause notice was issued to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July, 20XX. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20.08.20XX (received by Home Furnishers on 22.08.20XX) confirming a tax demand of Rs. 50,00,000 and imposing a penalty of equal amount under section 122 of the CGST Act, 2017.

Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard:

- Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?
- Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?
- Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue

Illustration 7

With reference to the provisions of section 120 of the CGST Act, 2017, list the cases in which appeal is not to be filed

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Illustration 8

Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate authority (AA) or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA.

What are the exceptional circumstances specified in the rule where the production of additional evidence will be allowed? Can AA or the Tribunal direct production of any document or examination of any witness?

Illustration 9

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	Amount
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 2

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.

Illustration (Authorised Representative)

Who can be an Authorised Representative?

Illustration 10

With reference to section 108 of CGST Act, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

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21.LIABILITY TO PAY TAX IN CERTAIN CASES

Contents

- Understanding the liabiliity in case of transfer of buiness
- Understanding the liability in case of amalgamation or merger of companies.
- Understanding the liability of directors or partners.
- Understanding different cases in which liabilities arise or gets transferred.

1. LIABILITY TO PAY IN CASE OF TRANSFER OF BUSINESS – SECTION 85

1.1 - Cases covered under Section 85

Section 85 covers the case of **transfer of business** in **whole or in part** by a taxable person by way of

- sale, or
- gift, or
- lease, or
- leave and license, or
- hire, or
- in any other manner whatsoever

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1.2 - Liability of both the parties

- The transferor and the transferee will be **jointly and severally** liable **wholly or to the extent of such transfer**, to pay the tax, interest or any penalty due from the taxable person **up to the time of such transfer**.
- Both the parties will be liable when such liability has been determined –
  - **before** such transfer, but has **remained unpaid**, or
  - **after** the transfer.

1.3 - Liability of both the transferee

Where the transferee carries on the business either in his own name or in some other name, he shall be liable to –

- pay **tax** on the **supply of goods or services or both** effected by him with effect from the date of such **transfer**, and
- apply for **amendment of his certificate of registration** within prescribed time, if he is a registered person.

1.4 - Death of sole proprietor

The **transferee** shall be **liable** to pay any tax, interest or any penalty due from the transferor in cases of **transfer of business due to death** of sole proprietor.

2. LIABILITY OF AGENT AND PRINCIPAL - SECTION 86

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

3. LIABILITY TO PAY IN CASE OF AMALGMATION / MERGER SECTION 87

3.1 - Cases covered under Section 87

- Section 87 covers the cases when the amalgamation / merger of two or more companies is done by an **order** of the –
  - court, or
  - tribunal, or
  - otherwise; and
- the **order is to take effect** from a **date earlier to the date of the order**.

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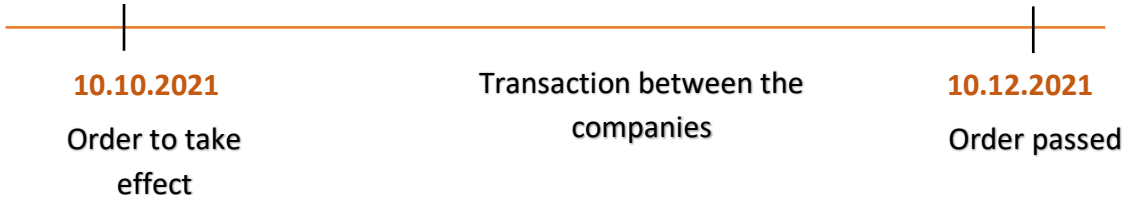

3.2 - Transactions between the two dates

- When the said companies have **supplied or received any goods or services** or both to or from each other,
- during the **period** commencing on the date from which the order takes effect till the date of the order, then
- such transactions of supply and receipt shall be **included in the turnover** of supply or receipt of the **respective companies** and they shall be liable to pay tax accordingly.

3.3 - Other provisions

- For the purposes of this Act, the said two or more companies shall be treated as **distinct companies** for the period **up to the date of the said order**.
- The **registration certificates** of the said companies shall be **cancelled** with effect **from the date of the said order**.

4. LIABILITY TO PAY IN CASE OF COMPANY IN LIQUIDATION SECTION 88

4.1 - General provisions

- Section 88 covers cases when a company is being **wound up** whether under the **orders** of a court or Tribunal or otherwise.
- Here, every person **appointed as receiver** of any assets of a company (i.e. the liquidator) shall give **intimation of his appointment to the Commissioner** within **30 days** after his appointment.
- The Commissioner shall, after making such inquiry or calling for such information as he may deem fit **notify the liquidator** the **amount** which will be **sufficient to provide for any tax, interest or penalty** which is then, or is likely thereafter to become, payable by the company.
- Such notification shall be given by the Commissioner within **3 months** from the date on which he receives intimation of the appointment of the liquidator.

4.2 - Provision in case of a private company

When any private company is wound up and any tax, interest or penalty is determined for any period, **whether before or in the course of or after its liquidation** and if such amount **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 such payment.
- However, he will **not be 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.

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5. LIABILITY OF DIRECTORS OF PRIVATE COMPANY - SECTION 89

5.1 - Non – payment of tax, interest or penalty

Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then –

- Every person who was a **director** of the private company **during such period** shall, **jointly and severally**, be liable for the payment of such tax, interest or penalty.
- However, he will **not be 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.

5.2 - Conversion of a private company into a public company

Nothing given above (in point 5.1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty where a **private company is converted into a public company** and such payment **belongs to the period when such company was a private company** and cannot be recovered before such conversion.

However, **nothing contained here** shall **apply to any personal penalty** imposed on such director.

6. LIABILITY OF PARTNERS TO PAY TAX - SECTION 90

6.1 - Joint and several liability

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.

6.2 - Liability in case of retirement of a partner

- If any partner retires from the firm, the **date of retirement** shall be **intimated to the Commissioner**.
- The intimation shall be given by a **notice in writing**.
- The intimation can be given by the **firm or the partner** himself.
- The retiring partner shall be liable to pay tax, interest or penalty due **up to the date of his retirement**.
- Such liability will be **applicable** whether the **same is determined or not on that date**.
- The intimation should be **given within 1 month** from the date of retirement.
- If the intimation is not given within 1 month, the **liability of such partner** (as given in 6.1) shall **continue until the date on which such intimation is received** by the Commissioner.

Example –

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Mr. Rajesh, a partner in M/s RKS & Associates retires on 1st April 2021. During the time of assessment, the proper officer found a liability for the period of January 2021. Mr. Rajesh is of the opinion that since he has retired from the firm, he shall not be liable for any liability which came forward after his date of retirement.

Solution –

The contention of Mr. Rajesh is wrong. Since, the liability relates to the period when he was the partner i.e. before 01st April 2021, he shall be liable for the same. The retiring partner is liable to pay tax, interest or penalty due up to the date of his retirement, whether the same is determined or not on that date.

7. LIABILITY OF GUARDIANS, TRUSTEES, ETC. - SECTION 91

- Section 91 is applicable when the business is carried on by a guardian, trustee or the agent of –
  - a minor or
  - incapacitated person
- Where any tax, interest or penalty is payable in respect of such business, the same shall be **levied upon and recoverable from such guardian, trustee or agent** as if **he were a major or capacitated person** and as if he were **conducting the business himself** and all the provisions of this Act or the rules made thereunder shall apply accordingly.

8. LIABILITY OF COURT OF WARDS ETC. - SECTION 92

- Section 92 is applicable where the **estate or any portion of the estate** is **under the control** of the –
  - Court of Wards, or
  - Administrator General, or
  - Official Trustee, or
  - any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court.
- Where any tax, interest or penalty is payable in respect of the business of the taxable person owning the estate, the same shall be **levied upon and 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.

9. SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES - SECTION 93

Section 93 provides different cases for payment of tax, interest and liability. However, the **provisions of Insolvency and Bankruptcy code, 2016 shall overrule** the provisions contained in Section 93.

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9.1 - Liability in case of death

Where a person liable to pay tax, interest or penalty dies then –

- If the **business is continued** by his legal representative or any other person, **such legal representative or other person, shall be liable** to pay such amount.
- If the business is **discontinued**, whether before or after his death –
  - His legal representative shall be liable to pay **out of the estate of the deceased**.
  - The payment shall be done to the **extent to which the estate is capable** of meeting the charge, tax, interest or penalty.
  - Such payment has to done whether it has been **determined before his death but has remained unpaid or is determined after his death**.

9.2 - Liability in case of death of sole proprietor

The **successor shall be liable** to pay any tax, interest or any penalty due from the transferor in cases of **transfer of business due to death** of sole proprietor.

9.3 - Liability in case of partition of the property of HUF or AOP

Where a taxable person, liable to pay tax, interest or penalty under this Act, is a HUF or an AOP and the property of the HUF or the AOP is **partitioned amongst the members** then –

- **each member** shall, **jointly and severally**, be liable to pay the tax, interest or penalty due from the taxable person.
- Such liability will be **due up to the time of the partition** whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

9.4 - Liability in case of dissolution of firm

Where a taxable person, liable to pay tax, interest or penalty is a firm and the **firm is dissolved** then

- every person who was a **partner** shall, **jointly and severally**, be liable to pay the tax, interest or penalty due from the firm.
- Such liability will be **due up to the time of the dissolution** whether such tax, penalty or interest has been determined before dissolution but has remained unpaid or is determined after the dissolution.

9.5 - Liability in case of termination of guardianship or trust

Where a taxable person liable to pay tax, interest or penalty under this Act is –

- the **guardian of a ward** on whose behalf the business is carried on by the guardian, or
- a **trustee** who carries on the business under a trust for a beneficiary,

then, if the guardianship or trust is terminated, the **ward or the beneficiary shall be liable** to pay the tax, interest or penalty due from the taxable person.

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Such liability will be **due 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.

10. LIABILITY IN OTHER CASES - SECTION 94

10.1 - Discontinuance of a firm, AOP or an HUF

Where a taxable person is a firm or an AOP or an HUF and such firm, association or family has discontinued business –

- the tax, interest or penalty payable **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, interest and penalty whether such amount has been determined **prior to or after such discontinuance** and
- the provisions of this Act shall apply as if every such person or partner or member were **himself a taxable person**.

The provision shall be applicable even in the case of dissolution of the firm or AOP and partition of the HUF.

10.2 - Change in constitution of a firm or an AOP

Where a change has occurred in the constitution of a firm or an AOP, the partners of the firm or members of association, **as it existed before and as it exists after the reconstitution**, shall, without prejudice to the provisions of section 90, **jointly and severally**, be liable to pay tax, interest or penalty due from such firm or association **for any period before its reconstitution**.

Note –

For the purpose of this chapter, a **Limited Liability Partnership** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall **also be considered as a firm**.

11. IMPORTANT DEFINITIONS

11.1 - Agent

Agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

11.2 - Principal

Principal means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

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11.3 - Commissioner

Commissioner means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the IGST Act.

11.4 - Business

Business includes –

a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
f) admission, for a consideration, of persons to any premises;
g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and

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

ILLUSTRATIONS

Illustration 1 (Questions – I)

Avatar industries, a registered person under GST has sold whole of its business to Rolex manufacturers.

Determine the person liable to pay GST, interest, or any penalty under GST law.

Determine before sale but still unpaid determined by Avatar Ltd. up to the time of such transfer.

Illustration 2 (Questions – I)

ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf.

Raghav & Sons sells goods to Swami Associates on behalf of ABC Manufacturers Ltd.

Determine the liability to pay GST payable on such goods as per the provisions of section 86.

Illustration 3 (Questions – I)

Explain the provisions related to liability for GST in case of company in liquidation.

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Illustration 4 (Questions – I)

Discuss the liability to pay tax in case of an amalgamation/merger, under section 87 of CGST Act.

Illustration 5 (Questions – II)

A person, liable to pay GST, interest and penalty under GST law, dies.

Determine the person liable to pay the GST, interest and penalty due from such person under GST law determined after his death if the business carried on by such person is continued after his death by his legal representative.

Would your answer be different, if the business carried on by the person who has died is discontinued after his death?

Illustration 6 (Questions – II)

What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?

22. DEMAND & RECOVERY

Contents

- Understanding different cases of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised.
- Understanding recovery proceedings.
- Understanding the provisions for oayment of tax in instalments.
- Understanding the cases where the transfer of property is void.
- Understanding the provisions related to provisional attachment

1. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR ITC WRONGLY AVAILED OR UTILISED FOR ANY REASON OTHER THAN FRAUD OR ANY WILLFUL MISSTATEMENT OR SUPPRESSION OF FACTS - SECTION 73

1.1 - Cases covered under Section 73

The section covers the below mentioned cases –

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- Non-payment of output tax
- Short payment of output tax
- Erroneous refund of tax
- Wrong availment of ITC
- Wrong utilisation of ITC

However, in order to be covered under Section 73, the above acts shall be conducted for reason other than fraud or wilful misstatement or suppression of facts.

1.2 - Issue of notice

- The proper officer will ***issue a show cause notice*** (SCN) if any of the cases (as mentioned in 1.1 above) gets attracted.
- The proper officer ***may communicate*** the details of tax, interest and penalty to the taxable person ***before serving the SCN***.
- The show cause notice would ***specify*** the following –
  - amount of ***tax***
  - ***interest*** payable
  - amount of ***penalty*** leviable
  - the ***grounds*** based on which such demand is raised

1.3 - Notice in case of repetitive offence

- Where a notice has been issued already for any period, the proper officer may ***serve a statement*** containing the details of the offence (mentioned in 1.1).
- The service of such statement shall be ***deemed to be service of notice*** on such person.
- However, such statement will be valid only if the ***grounds*** relied upon for such tax periods ***are the same as are mentioned in the earlier notice***.

  Example –

  Mr. Raj has availed wrong ITC for the period of May'21 and June'21. The proper officer has issued a notice under Section 73 for wrong availment of ITC for the period of May'21.
  In this case, the officer can issue a statement for June'21 instead of issuing the notice again for the period of June'21.

1.4 - No need for notice

The SCN/ statement shall **not be issued** if the taxpayer **voluntarily comes forward** and **pay the tax along with the interest before the issue of SCN**/ statement.

Other points to consider are –

- The payment of tax and interest can be done either on the basis of his ***own*** ascertainment or ***as communicated by the officer***.
- Further, he needs to ***inform*** the proper officer ***in writing of such payment***.
- The proper officer shall ***issue an acknowledgement***, accepting the payment made by the said person in prescribed form.
- The SCN will not be issued only if the payment of tax and interest is ***done in full***.

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1.5 - Issue of order

- If the taxpayer ***pays*** the amount mentioned in SCN ***within 30 days of issue of SCN, no order shall be issued*** and all the proceedings in respect of the said notice shall be deemed as concluded.
- Otherwise, the officer shall issue an order stating the amount of tax, interest and penalty payable by the taxable person, ***after careful consideration of the representations*** made by the taxable person.

Note –

The expression **"all proceedings in respect of the said notice"** shall **not include proceedings under section 132**.

Section 132 is in relation to prosecution. Thus, the person can be prosecuted under GST law even if no further demand can be raised for tax, interest or penalty. Prosecution in criminal court is independent of and can be in addition to, penalty imposed under GST law.

1.6 - Time limit of issue of notice and issue of order

Time limit for issue of order –

The order under Section 73 shall be issued **within 3 years** from the **due date for furnishing of annual return** for the financial year to which the case (mentioned in 1.1) relates to.

Example –

Mr. Mohan has availed wrong ITC in the month of August 2021.

In this case the due date of annual return falls on 31st December 2022. Thus, the time limit for issue of order will be 3 years from 31.12.2022 i.e., till 31st December 2025.

Time limit for issue of notice –

The proper officer shall issue the notice under Section 73 **at least 3 months prior** to the time limit specified for the issuance of order.

Thus, the time limit for issuing the notice shall be **2 years and 9 months** from the **due date for furnishing of annual return** for the financial year to which the case (mentioned in 1.1) relates to.

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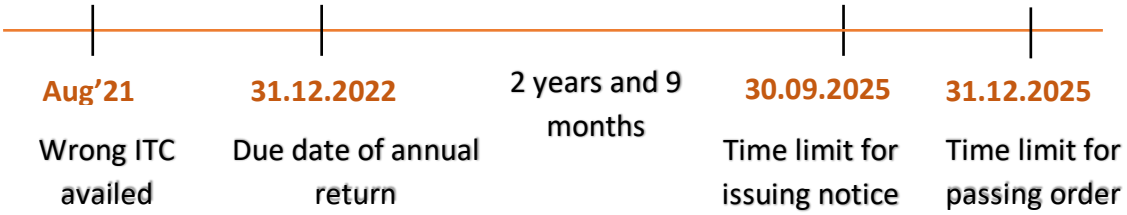
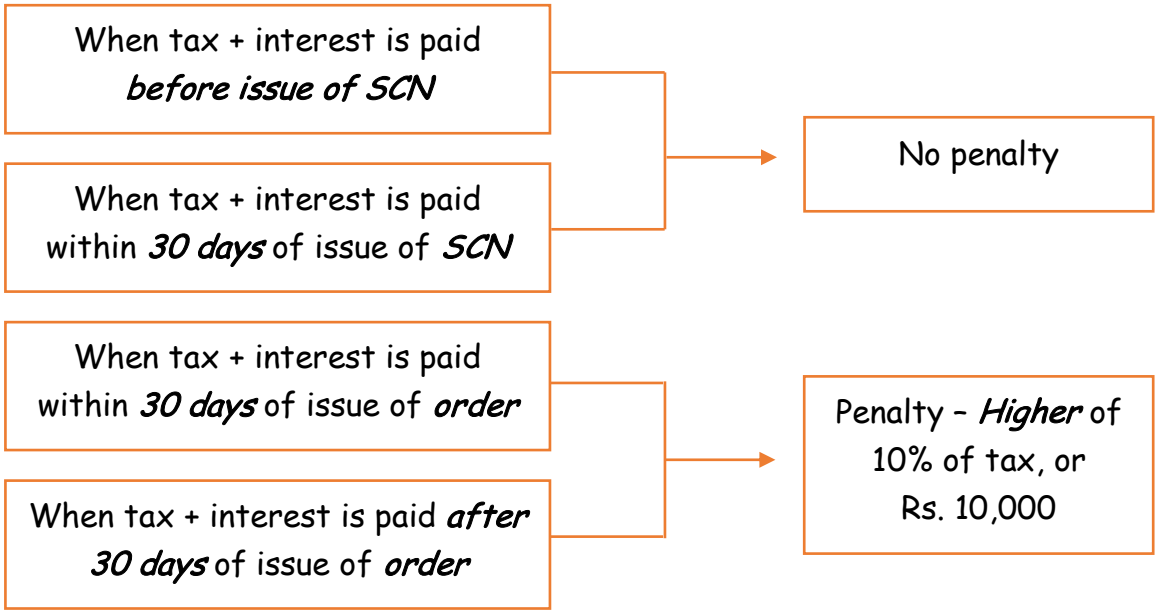
Example –

In the above example, the time limit for issuing notice shall be 2 years and 9 months from 31st December 2022 (due date of annual return for 2021-22). Thus, the time limit for issue of notice will be 30th September 2025.



1.7 - Penalty under different situations



1.8 - Penalty in special case

The 2 cases covered here are –

1. When the tax is ***self-assessed*** by the taxpayer.
2. When the tax is ***collected but not paid*** to the government.

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In both the above cases, there will be no penalty if tax is paid along with interest **within 30 days from the due date** of such payment.

But if the payment is not done within 30 days from due date, the **penalty** shall be levied at **higher of** 10% of tax or Rs. 10,000/-.

2. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR ITC WRONGLY AVAILED OR UTILISED BY REASON OF FRAUD OR ANY WILLFUL MISSTATEMENT OR SUPPRESSION OF FACTS - SECTION 74

2.1 - Cases covered under Section 73

The section covers the below mentioned cases –

- Non-payment of output tax
- Short payment of output tax
- Erroneous refund of tax
- Wrong availment of ITC
- Wrong utilisation of ITC

However, in order to be covered under Section 74, the above acts shall be conducted by reason of fraud or willful misstatement or suppression of facts.

2.2 - Issue of notice

- The proper officer will ***issue a show cause notice*** (SCN) if any of the cases (as mentioned in 2.1 above) gets attracted.
- The proper officer ***may communicate*** the details of tax, interest and penalty to the taxable person ***before serving the SCN***.
- The show cause notice would ***specify*** the following –
  - amount of ***tax***
  - ***interest*** payable
  - amount of ***penalty*** leviable
  - the ***grounds*** based on which such demand is raised

2.3 - Notice in case of repetitive offence

- Where a notice has been issued already for any period, the proper officer may ***serve a statement*** containing the details of the offence (mentioned in 2.1).
- The service of such statement shall be ***deemed to be service of notice*** on such person.
- However, such statement will be valid only if the ***grounds*** relied upon for such tax periods ***are the same as are mentioned in the earlier notice***.

2.4 - No need for notice

The SCN/ statement shall **not be issued** if the taxpayer **voluntarily comes forward** and **pay the tax, interest and penalty equal to 15% of the tax amount, before the issue of SCN**/ statement.

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Other points to consider are –

- The payment of tax, interest and penalty can be done either on the basis of his ***own*** ascertainment or ***as communicated by the officer***.
- Further, he needs to ***inform*** the proper officer ***in writing of such payment***.
- The proper officer shall ***issue an acknowledgement***, accepting the payment made by the said person in prescribed form.
- The SCN will not be issued only if the payment of tax, interest and penalty is ***done in full***.

2.5 - Issue of order

- If the taxpayer ***pays*** the amount mentioned in SCN ***within 30 days of issue of SCN, no order shall be issued*** and all the proceedings in respect of the said notice shall be deemed as concluded.
- Otherwise, the officer shall issue an order stating the amount of tax, interest and penalty payable by the taxable person, ***after careful consideration of the representations*** made by the taxable person.

Note –

The expression **"all proceedings in respect of the said notice"** shall **not include proceedings under section 132.**

Section 132 is in relation to prosecution. Thus, the person can be prosecuted under GST law even if no further demand can be raised for tax, interest or penalty. Prosecution in criminal court is independent of and can be in addition to, penalty imposed under GST law.

2.6 - Time limit of issue of notice and issue of order

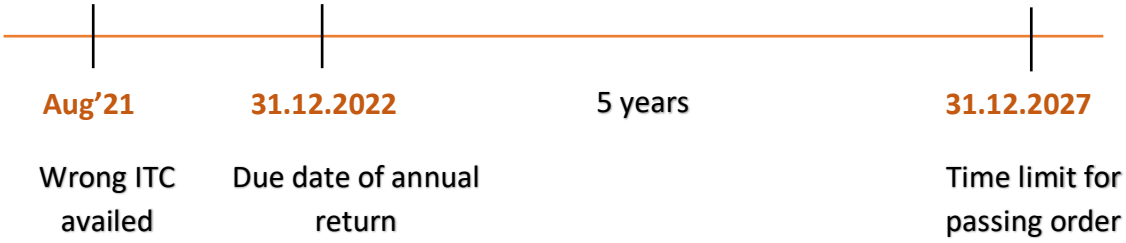
Time limit for issue of order –

The order under Section 74 shall be issued **within 5 years** from the **due date for furnishing of annual return** for the financial year to which the case (mentioned in 2.1) relates to.

Example –

Mr. Sohan has wilfully misstated the ITC to be availed for the month of August 2021.

In this case the due date of annual return falls on 31st December 2022. Thus, the time limit for issue of order will be 5 years from 31.12.2022 i.e. till 31st December 2027.



Time limit for issue of notice –

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The proper officer shall issue the notice under Section 74 **at least 6 months prior** to the time limit specified for the issuance of order.

Thus, the time limit for issuing the notice shall be **4 years and 6 months** from the **due date for furnishing of annual return** for the financial year to which the case (mentioned in 2.1) relates to.

Example –

In the above example, the time limit for issuing notice shall be 4 years and 6 months from 31st December 2022 (due date of annual return for 2021-22). Thus, the time limit for issue of notice will be 30th June 2027.

2.7 - Penalty under different situations

When tax + interest is paid ***before issue of SCN***	→	Penalty – 15% of tax
When tax + interest is paid within ***30 days*** of issue of ***SCN***	→	Penalty – 25% of tax
When tax + interest is paid within ***30 days*** of issue of ***order***	→	Penalty – 50% of tax
When tax + interest is paid ***after 30 days*** of issue of ***order***	→	Penalty – 100% of tax

2.8 - Proceedings against Co-noticees

Where the notice under the ***same proceedings*** is issued to the ***main person*** liable to pay tax and ***some other persons***, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

In practical sense, when a notice is issued to a company, it may be also issued to its executive director, employees, transporter etc. for same cause of action. These are termed as 'co- noticees', while company is the 'main noticee'. ***Conclusion of proceedings against main noticee would be deemed to be conclusion of proceedings against all co-noticees also and the entire case will stand closed.***

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2.9 - Meaning of term 'suppression'

The expression 'suppression' shall mean ***non-declaration of facts or information*** which a taxable person is ***required to declare*** in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Thus, definition of 'suppression' is very clear that only if information that was required to be disclosed under the GST law (e.g. in return, statement or report or when specific query was raised) is not disclosed, that would amount to 'suppression'. It is ***not the duty of a taxable person to disclose each material fact to the Department, if it is not asked for***.

2.10 - Monetary limit for issuance of SCN by different level of officers

The SCN and order under Section 73 and 74 are issued by the different level of officers depending upon the quantum involved. The monetary limit and level of officer are mentioned below –

CGST Officer	*Monetary limit of CGST*	*Monetary limit of IGST*
Superintendent	Upto Rs. 10,00,000/-	Upto Rs. 20,00,000/-
Deputy or Assistant Commissioner	Above Rs. 10 lakhs and upto Rs. 1 crore	Above Rs. 20 lakhs and upto Rs. 2 crores
Additional or Joint Commissioner	Above 1 Crores	Above 2 crores

The PO shall be determined solely based on the amount of tax demanded under Section 74A excluding penalties.

If PO issues notice within their monetary limit but the tax demanded later in the statement exceeds that limit then the statement must be handled by the higher ranked officer

When an appellate authority/ tribunal or court rules that fraud or suppression is not proved, the same adjudicating authority who issued the original SCN will determine revised penalty payable.

If SCN is issued under Section 74A involves both CGST and IGST, then PO shall be determined based on the combined amount

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3. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR ITC WRONGLY AVAILED OR UTILISED BY REASON PERTAINING TO F.Y. 24-25 ONWARDS - SECTION 74A

Both Section 73 and 74 are applicable for determination of tax for the priod upto F.Y. 2023-24.

For determination of tax for period of Financial Year 2024-25 onwards, a combined version of Section 73 and 74 that is Section 74A has been inserted.

3.1 – Issuance of SCN

If Tax has not been paid/short paid or ITC wrongly availed/utilised or refund taken erroneously, proper officer shall issue a SCN

Note: SCN shall not be issued, if the amount of tax or ITC or Refund involved is less than Rs. 1000 in a financial year

3.2 – Time limit to Issue SCN

SCN shall be issued:

- Within 42 months from the due date of annual return for financial year to which such dues relate, or
- Within 42 months from the date of erroneous refund.

3.3 – Time limit to pause the order

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Order shall be passed within 12 months from the date of issue of SCN

Note: Commissioner or an officer authorised by the commissioner not below the rank of joint commissioner extend search period to a maximum of further 6 months (reasons for such extension to be recorded in writing)

3.4 – Amount of Penalty

- If non-payment/short payment etc. for reasons other than fraud, wilful misstatements, or suppression of facts and demand has been paid

Before issue of SCN	No penalty
Within 60 days from issue of SCN	No penalty
Otherwise	• 10% of Tax • Rs. 10,000 (CGST) / Rs. 20,000 IGST whichever is higher

Note: However, in case of self-assessed tax or amount collected as tax and not paid within 30 days from the due date, penalty shall be applicable in all cases

- If non-payment/short payment etc. for reasons of fraud, wilful misstatements, or suppression of facts and demand has been paid

Before issuance of SCN	15% of Tax
Within 60 days of SCN	25% of Tax

Within 60 days of Order	50% of Tax
Otherwise	100% of Tax

3.5 – Other Points

If Initially notice was issued u/s 74A on charges of fraud, wilful misstatement, or suppression of tax by the proper officer, but the charges of fraud, wilful misstatement or suppression of facts could not be proved in such case, penalty shall be payable u/s 74A as applicable in case of other than fraud, wilful misstatement or Suppression of facts

4. GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX - SECTION 75

The provisions of Section 75 are applicable to the cases covered in Section 73 and Section 74.

4.1 - Computation of limitation period

The computation of the time period under Section 73 or Section 74 shall stand modified in the below mentioned circumstances –

1. **Stay order –**

   When a ***stay order is passed by a court or Appellate Tribunal***, such time period shall be ***reduced*** for issuance of ***notice or order*** under Section 73 or 74.

2. **Direction of the Appellate Authority or Appellate Tribunal or a court –**

   Where any ***order*** is required to be issued in pursuance of the ***direction of the Appellate Authority or Appellate Tribunal or a court***, such order shall be issued ***within 2 years*** from the date of communication of the said direction.

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3. **Order prejudicial to the interest of revenue –**
   - When a ***similar issue*** is going on ***in some other proceeding***, and
   - a ***decision is taken*** by the Appellate Authority or the Appellate Tribunal or the High Court, and
   - such decision is ***prejudicial*** to the ***interest of revenue***, and
   - an ***appeal*** to the Appellate Tribunal or the High Court or the Supreme Court against such decision is pending, then
   - the ***time spent in the decision*** of the appeal shall be ***reduced*** while computing the ***time limit to pass an order*** under Section 73 or 74.

4.2 - Deemed notice under Section 73

Where any ***Appellate Authority or Appellate Tribunal or court*** concludes that the ***notice issued under section 74 is not sustainable*** for the reason that the ***charges*** of fraud or any wilful misstatement or suppression of facts to evade tax ***has not been established*** against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, ***deeming as if the notice were issued under section 73***.

4.3 - Rights of the taxable person

The person charged with tax or penalty under Section 73 or 74 shall have the below mentioned rights –

1. He shall have an ***opportunity of being hearing*** when –
   - a ***request*** is made by him in writing, or
   - where any ***adverse decision*** is contemplated against such person.
2. He has the right to get the ***meeting adjourned*** by showing sufficient reasons for the same. The reason shall be recorded by the officer in writing. However, adjournment will ***not*** be granted for ***more than three times***.

4.4 - Contents of the order

- The order must be a speaking order i.e. it must contain the ***relevant facts*** of the case and the ***basis of the decision***.
- The amount of tax, interest and penalty demanded in the order shall ***not*** be in ***excess*** of the amount ***specified in the notice***.

  Note –

  Though the power of charging excess tax is not available with the officer, the same ***can be done by Appellate Authority or Appellate Tribunal or court*** and when the amount of tax is modified, the amount of interest and penalty shall stand modified accordingly.
- The ***grounds*** of the demand under order shall be the ***same grounds*** as specified in the notice.

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4.5 - Deemed payment of interest

It is interesting to note that the payment of interest (at the rate of 18% or 24% from the due date of payment till the date of actual payment) has to be done by the person charged under Section 73 or 74 ***irrespective*** of the fact that such ***interest is mentioned in the order or not***.

4.6 - Deemed conclusion of the order

The adjudication proceedings shall be deemed to be concluded, if the ***order is not issued within 3 years*** as provided in section 73 ***or within 5 years*** as provided in of section 74.

4.7 - Self-assessed tax

Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a ***return furnished under section 39 remains unpaid***, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the ***same shall be recovered under the provisions of section 79***.

The expression "self-assessed tax" shall ***include*** the tax payable in respect of details of outward supplies furnished under ***section 37***, ***but not included*** in the return furnished under ***section 39***.

The scope of the term ***"self-assessed tax"*** is wide enough and hence the recovery proceedings can straight away be ***initiated by the proper officer*** for the outward supplies shown in the Form GSTR-1, if not reflecting in Form GSTR-3B.

In other words, where the tax payable in respect of details of outward supplies furnished in Form GSTR-1, has not been paid through Form GSTR-3B, either wholly/partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under section 79

However, the ***difference/mismatch*** between details of ***Form GSTR-1*** and ***Form GSTR-3B*** may arise due genuine reasons:

- a ***typographical error***/wrongly reported details in GSTR-1 or GSTR-3B ***which may be rectified in subsequent*** GSTR-1 or GSTR-3B, or
- where a supply ***could not be declared in GSTR-1*** of an earlier tax period, though the ***tax on the same was paid*** by correctly reporting the same ***in GSTR-3B*** of said tax period; details may now be reported in the GSTR-1 of the current tax period.

Therefore, ***Instruction No. 01/2022 GST dated 07/01/2022*** provides that in case of mismatch between GSTR-1 and GSTR-3B, the ***proper officer*** may ***first send a communication*** to the registered person ***to pay*** the self - assessed tax ***short paid/not paid***, or to ***explain the reasons*** for the same, within a ***reasonable time prescribed*** in the communication.

Recovery proceedings under section 79 will be initiated by the proper officer only when the said person either -

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i. fails to reply to the proper officer, or

ii. fails to make the payment of such amount short paid/not paid within the prescribed time or

iii. fails to explain the reasons for such amount short paid/not paid.

4.8 - Penalty

- Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.
- Any person who has ***retained the benefit*** of transactions specified under section 122(1A), ***and*** at whose instance such transactions are conducted, ***shall also be liable for penal action*** under section 122(1A).
- It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of ITC, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of ITC or refund of tax, provisions of section 132 may also be invokable, subject to conditions specified therein, based on facts and circumstances of each case.

5. TAX COLLECTED BUT NOT PAID TO THE GOVERNMENT - SECTION 76

5.1 - Applicability of the Section

Section 76 is applicable when an ***amount is collected*** in the name of GST but the same is ***not deposited*** with the government.

The Section gets attracted irrespective of the fact that the supply was actually taxable or not.

Example -

Mr. Ravi supplies goods to Mr. Kishan at the rate of 18%. However, the actual rate was 12% and Mr. Ravi deposited 12% tax to the government.

In this case, Section 76 will be attracted and Mr. Ravi is entitled to deposit the extra 6% to the government.

It is to be noted that the payment shall be done irrespective of the fact that 18% was charged intentionally or by mistake.

5.2 - Issue of SCN

- When a person is covered under Section 76, the officer shall serve a ***notice*** to the person ***specifying the tax and penalty*** payable.
- Such person shall also be liable to ***pay interest*** at the rate specified under Section 50 i.e. 18%.
- Such interest will be payable from the ***date such amount was collected*** by him ***to the date such amount is paid*** by him ***to the Government***.

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5.3 - Right of the person to whom SCN is issued

The person to whom SCN has been issued has a right to demand ***opportunity of being heard***. However, such request must be made in writing.

5.4 - Issue of order

- The proper officer shall issue an ***order specifying the amount due*** from such person ***after consideration of the representations*** made by him.
- The order must be a ***speaking order*** specifying the relevant facts and the basis of his decision.
- The order shall be issued ***within 1 year*** from the ***date of issue of notice***.
- Where the issuance of order is ***stayed by an order*** of the court or Appellate Tribunal, the ***period of such stay shall be excluded*** in computing the period of 1 year.

5.5 - Treatment of the amount received

- The amount received by the Government shall be ***adjusted against the tax payable***, if any, by the person in relation to the supplies.

- Where any ***surplus is left*** after the adjustment, such amount shall either be ***credited to the Fund*** or ***refunded to the person*** who has ***borne the incidence*** of such amount.

5.6 - Right of the person bearing the incidence of the amount

The person who has borne the incidence of the amount, may ***apply for the refund*** of the same in accordance with the provisions of section 54.

6. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT - SECTION 77

6.1 - Applicability of the Section

Section 77 becomes applicable when –

1. A registered person ***considers a supply as intra-state*** supply and pays CGST and SGST/ UTGST for such supply but it was later discovered that ***it was an inter-state supply*** and thus IGST was applicable.
2. A registered person ***considers a supply as inter-state*** supply and pays IGST for such supply but it was later discovered that ***it was an intra-state supply*** and thus CGST and SGST/ UTGST was applicable.

6.2 - Provisions of the Section

Section 77 prescribes that in the above-mentioned cases, the registered person has to do the following –

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- He shall pay the correct tax to the government as applicable.
- After payment of correct tax, he can claim refund of the tax wrongly paid.
- Also, no interest will be charged under Section 50 for such payment.

6.3 – Clarifications

Section 77 refers to such both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding, for instance, scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding.

Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

7. INITIATION OF RECOVERY PROCEEDINGS - SECTION 78

The recovery proceedings can be initiated when –

Any ***amount is payable*** by a taxable person in ***pursuance of an order*** passed under this Act and such amount is ***not paid within a period of 3 months*** from the ***date of service*** of such order.

However, where the proper officer considers it ***expedient in the interest of revenue***, he may, require the said taxable person to ***make such payment*** within such ***period less than a period of 3 months***.

The ***reason*** for such early payment must be ***recorded in writing***.

8. RECOVERY OF TAX - SECTION 79

Section 78 specifies the case when recovery proceedings can be initiated whereas Section 79 talks about various modes of recovery

8.1 - Deduction from the money owed

The proper officer may deduct or may require any other specified officer to ***deduct*** the amount so payable by the taxable person from ***any money owing to such person*** which may be ***under the control of the proper officer or such other specified officer***.

Note –

Specified officer shall mean any officer of –

- the Central Government, or
- a State Government, or
- the Government of a Union territory, or
- a local authority, or
- of a Board or Corporation, or
- a company owned or controlled wholly or partly by the Central Government or a State Government or the Government of a Union territory or a local authority.

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Example –

Mr. Anand has to make a payment of Rs. 10,00,000/- in pursuance of an order and such payment is not paid within 3 months, thus attracting Section 78 and 79. As per the records, he has filed for a refund of Rs. 12,00,000/- from the GST department and he is eligible for the same.

In this case, the government officials will recover the payable amount i.e. Rs. 10,00,000/- from the amount of refund payable to him i.e. Rs. 12,00,000/-.

8.2 - Recovery from sale of goods

- The proper officer may recover or may require any other specified officer to recover the amount so payable by ***detaining and selling any goods*** belonging to such person which are under the control of the proper officer or such other specified officer.
- The sale will be done by the ***process of auction or e-auction***.
- The proper officer shall ***prepare an inventory*** and ***estimate the market value*** of such goods and proceed to ***sell only so much*** of the goods ***as may be required for recovering*** the ***amount payable*** along with the ***administrative expenditure*** incurred on the recovery process.
- Where the ***defaulter pays the amount*** under recovery, including any expenses incurred on the process of recovery, ***before the issue of the notice*** for auction, the proper officer shall ***cancel the process of auction*** and ***release the goods***.

8.3 - Garnishee proceedings

- The proper officer may, by a ***notice in writing***, require any other person from whom –
  - money is due or may become due, or
  - who holds or may subsequently hold money for or on account of such person,

to pay to the Government, so much of the money as is ***sufficient to pay the amount*** due from such person or the whole of the money when it is equal to or less than that amount.

- Every person to ***whom the notice is issued*** (as mentioned above) shall be ***bound to comply*** with such notice.
- Where any such notice is issued to a ***post office, banking company or an insurer***, it shall ***not be necessary*** to produce any pass book, deposit receipt, policy or any other document, before such payment is made.
- If the ***person to whom a notice*** has been issued, ***fails to make the payment*** to the Government, he shall be ***deemed to be a defaulter*** and all the consequences of this Act or the rules made thereunder shall follow.
- The officer issuing the notice may, at any time, ***amend or revoke*** such notice or ***extend the time*** for making any payment in pursuance of the notice.
- Any person making any payment in compliance with the notice shall be ***deemed to have made the payment under the authority of the person in default*** and such payment shall be ***deemed to constitute a good and sufficient discharge of the liability*** of such person to the person in default to the extent of the amount specified in the receipt.
- Any person discharging any liability to the person in default after service on him of the notice shall be ***personally liable*** to the Government to the –
  - extent of the liability discharged, or
  - extent of the liability of the person in default for tax, interest and penalty,

  whichever is ***less***.
- Where a person on whom a notice is served ***proves to the satisfaction*** of the officer that the money demanded or any part thereof was –
  - ***not due*** to the person in default, or
  - he did ***not hold any money*** for or on account of the person in default,

  during the time the notice was served on him, nor is likely to become due, nothing contained in this section shall apply to such person and he would not be required to make any payment to the government.
- Where the ***third person makes the payment*** of the amount specified in the notice, the ***proper officer shall issue a certificate*** in prescribed form to the third person clearly ***indicating the details of the liability so discharged***.

8.4 - Sale of movable/ immovable property

- The proper officer may, ***distrain*** any movable or immovable property belonging to or under the control of such person ***until the amount payable is paid***.
- The proper officer shall –

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- prepare a ***list of movable and immovable property*** belonging to the defaulter,
    - ***estimate their value*** as per the prevalent market price, and
    - issue an ***order of attachment*** or ***distraint***, and
    - put a notice for sale prohibiting any transaction with regard to such movable and immovable property.
- In case of attachment/distraint of an ***immovable property***, ***order shall be affixed on the property*** till the confirmation of sale.
- In case of attachment/distraint of a ***movable property***, proper officer shall ***seize the property and take its custody***.
- The said property ***may be sold*** if –
    - any part of the said amount, or
    - the cost of the distress, or
    - the cost of keeping of the property,

remains ***unpaid for a period of 30 days*** from the date of distress.

- The property attached or distrained shall be ***sold through auction, including e-auction***.
- However, where the property to be sold is a ***negotiable instrument or a share*** in a corporation, the proper officer may, sell it ***through a broker***.
- Where any claim is preferred/ any ***objection is raised*** with regard to the attachment/ distraint of any property by a person ***claiming that he had some interest*** in possession of the property, proper officer shall ***investigate the same*** and postpone the sale till such time.
- If proper officer ***finds merit in his claims/ objection*** upon investigation, proper officer will ***release the property***, wholly or partly. Otherwise, the proper officer will reject the claim and proceed with the process of sale through auction.
- Where the ***defaulter pays*** the amount under recovery, including any expenses incurred on the process of recovery, ***before the issue of the notice for auction***, the proper officer shall ***cancel the process*** of auction and release the goods.
- The amounts so realised from the sale of goods, movable or immovable property, shall –
    - first, be appropriated against the ***administrative cost*** of the recovery process;
    - next, be appropriated against the ***amount to be recovered***;
    - next, be appropriated against ***any other amount due*** from the defaulter under the CGST Act or the IGST Act or the UTGST Act or any of the SGST Act and the rules made thereunder; and
    - any ***balance***, be ***paid to the defaulter***.
- ***Stamp duty/ any other tax/ fee payable*** on transfer of such property shall be ***paid by the transferee*** to the Government.
- Any officer/other person who has a ***duty to perform*** in connection with such sale will ***not acquire any interest in property sold***.
- ***No such sale*** will take place on ***Sundays/ other general holidays*** recognized by Government.
- Proper officer may ***seek assistance from jurisdictional police station***.

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8.5 - Recovery as arrears of land revenue

- The proper officer may ***prepare a certificate signed by him specifying*** the ***amount due*** from such person.
- Such certificate can be sent to the ***Collector of the district*** in which such person –
  - owns any property, or
  - resides, or
  - carries on his business, or
  - to any officer authorised by the Government
- The Collector or the said officer shall ***proceed to recover*** from such person the amount specified thereunder as if it were an ***arrear of land revenue***.

8.6 - Recovery as fine

The proper officer may file an ***application to the appropriate Magistrate*** and such Magistrate shall ***proceed to recover*** from such person the amount specified thereunder ***as if it were a fine*** imposed by him.

8.7 - Recovery through execution of a decree, etc.

Where any ***amount is payable*** to the defaulter in the ***execution of a decree*** of a Civil Court for the payment of money or for sale in the enforcement of a mortgage or charge, the ***proper officer shall send a request*** to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, ***execute the attached decree, and credit the net proceeds for settlement*** of the amount recoverable.

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8.8 - Recovery through surety

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

8.9 - Recovery from company in liquidation

Where the company is under liquidation as specified in section 88, the ***Commissioner shall notify the liquidator for the recovery of any amount*** representing tax, interest, penalty or any other amount due under the Act in prescribed form.

8.10 - Use of a specific mode of recovery

Where the ***terms of any bond or other instrument*** provide that any amount due under such instrument may be ***recovered in the specific manner***, the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the said manner.

8.11 - Recovery of CGST by SGST/ UTGST officer

- During the ***course of recovery of SGST / UTGST*** by the officer of State tax or Union territory tax, the ***officer may recover the arrears of CGST*** from the said person as if it were an arrear of State tax or Union territory tax.

- Such recovered amount shall be credited to the account of the Government.
- Where the ***amount recovered is less than the total amount*** due to the Central Government and State Government, the ***amount to be credited*** to the account of the respective Governments ***shall be in proportion to the amount due*** to each such Government.

9. PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS - SECTION 80

9.1 - Procedure to be followed for payment in instalments

- If a taxable person wishes to pay the tax in instalment, he can ***file an application with the Commissioner***.
- The Commissioner will call for a ***report from the jurisdictional officer*** about the ***financial ability*** of the taxable person to pay the said amount.
- After consideration of the application and the report, the commissioner can extend the time for such payment and allow the payment in instalments after ***recording the reasons*** for the same ***in writing***.
- The Commissioner shall allow maximum of ***24*** monthly instalments.
- There will be ***no concession in payment of interest*** and the same shall be paid as per Section 50.

9.2 - Default in payment of instalment

If there is ***default in payment*** of ***any one instalment on its due date*** then –

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- The ***whole outstanding balance*** payable on such date shall ***become due*** and payable.
- Such amount shall become ***liable for recovery***.
- ***No notice*** shall be issued to the person before proceeding with the recovery.

9.3 - Cases in which payment in instalments is not allowed

The payment of tax in instalments is not allowed in the below mentioned cases –

1. If the amount due is as per the ***liability self-assessed*** in any return.
2. If he has ***already defaulted*** on the payment of any amount under the CGST / SGST / IGST / UTGST act for which the ***recovery process is on***.
3. If he has ***not been allowed*** to ***make payment in instalments in the preceding financial year***.
4. The amount for which instalment facility is sought is ***less than Rs. 25,000/-***.

10. TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES (SECTION 81)

Section 81 considers the situation in which the person against whom any order has been passed for payment of tax, interest or penalty tries to sell his property in order to defraud the government to recover the due amount from the sale of property.

10.1 - Void transactions

Any sale, mortgage, exchange, or any other mode of transfer whatsoever of the properties shall be void if –

- such transaction has been entered ***after any amount has become due*** to him, and
- it is done with the ***intention of defrauding the Government revenue***

10.2 - Transaction not to be void

The transaction mentioned above shall not be void if it is done –

- for ***adequate consideration***,
- in ***good faith***,
- ***without notice*** of the ***pendency*** of such proceedings, or
- ***without notice of such tax*** or other sum payable by the said person, or
- with the ***previous permission of the proper officer***.

11. TAX TO BE FIRST CHARGE ON PROPERTY - SECTION 82

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.

However, the provisions in the Insolvency and Bankruptcy Code, 2016, shall be complied with.

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12. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES - SECTION 83

12.1 - Situations leading to provisional attachment

Provisional attachment can be during the ***pendency of proceedings*** under –

- section ***62*** i.e., assessment of non-filers of returns, or
- section ***63*** i.e., assessment of unregistered persons, or
- section ***64*** i.e., summary assessment in certain special cases, or
- section ***67*** i.e., Power of inspection, search and seizure, or
- section ***73*** i.e., Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts, or
- section ***74*** i.e., Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

12.2 - Other provisions

- The power of provisional attachment lies with the ***Commissioner***.
- He can provisionally attach ***any property, including bank account***.

12.3 - Process of provisional attachment

- Provisional attachment will be done by an ***order in writing*** if the commissioner is of the opinion that it is ***necessary*** to do so for the purpose of ***protecting the interest of the Government revenue***.
- The Commissioner shall ***send a copy of the order*** of attachment to the ***concerned Revenue Authority*** or ***Transport Authority*** or any such Authority ***to place encumbrance*** on the said movable or immovable property.
- A ***copy*** of the order of ***provisional attachment*** of the property including bank account shall also be sent to the person whose property is being attached
- Such encumbrance can be removed
    - ***only on the written instructions from the Commissioner*** to that effect, or
    - ***on expiry of a period of 1 year from the date of issuance of order of provisional attachment of property,***

  whichever is earlier

12.4 - Attachment of perishable or hazardous property

The ***attached property shall be released*** if it is of perishable or hazardous nature and the taxable person ***pays an amount equivalent*** to the ***lower of*** –

- ***market price*** of such property, or
- the ***amount*** that is or may become ***payable*** by the taxable person

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However, if the taxable person ***fails to pay the amount*** referred above, the Commissioner ***may dispose*** of such property and ***adjust the amount realised*** against the tax, interest, penalty, fee or any other amount payable by the taxable person.

12.5 - Objection to the attachment of property

- Any person whose property is attached ***may file an objection*** to the effect that the property attached was or is ***not liable to attachment***.
- Such objection can be filed ***within 7 days*** from the date of attachment.
- The Commissioner shall offer an ***opportunity of being heard*** to the person filing the objection.
- The Commissioner may, ***upon being satisfied*** that the property was, or is no longer liable for attachment, ***release such property*** by issuing an order.

12.6 - Attachment of debt

The proper officer has the right to attach the debt. However, following points shall be considered –

- The debt shall ***not be secured*** by a ***negotiable instrument***.
- Here, the ***creditor*** is prohibited ***from recovering the debt*** and the ***debtor from making payment*** thereof until the receipt of a further order from the proper officer.

- A ***copy of such order*** shall be ***affixed*** on some ***conspicuous part of the office*** of the proper officer and ***another copy*** shall be ***sent to the debtor***.
- The debtor may ***pay the amount*** of his debt ***to the proper officer*** and such payment shall be ***deemed as paid to the defaulter***.

12.7 - Attachment of shares in a corporation

The proper officer has the right to attach the shares in a corporation. However, following points shall be considered –

- The ***holder of the shares*** is prohibited ***from transferring the shares or receiving any dividend*** on the same.
- A ***copy of such order*** shall be ***affixed*** on some ***conspicuous part of the office*** of the proper officer and ***another copy*** shall be ***sent to the registered address of the corporation***.

12.8 - Attachment of movable property not in possession of the defaulter

The proper officer has the right to attach any ***movable property not in possession of the defaulter***. However, following points shall be considered –

- The rule covers all the movable property ***except*** the property which is in the ***custody of the court***.
- Here, the ***person in possession of the property*** is prohibited ***from giving it back*** to the defaulter.
- A ***copy of such order*** shall be ***affixed*** on some ***conspicuous part of the office*** of the proper officer and ***another copy*** shall be ***sent to the person in possession of the property***.

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12.9 - Attachment of property in custody of courts or public officer

Where the property to be attached is in the custody of any court or Public Officer, the proper officer shall ***send the order of attachment*** to such court or officer, ***requesting that such property, any interest or dividend becoming payable*** thereon, may be ***held till the recovery of the amount payable***.

12.10 - Attachment of interest in partnership

Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order –

- ***charging the share*** of such partner in the partnership property, and
- ***profits with payment of the amount*** due under the certificate, and
- may by the same or subsequent order, ***appoint a receiver*** of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

However, the ***other partners*** shall be ***at liberty*** at any time to ***redeem the interest charged*** or, in the case of a sale being directed, to purchase the same.

12.11 - Maximum period of provisional attachment

The provisional attachment shall ***cease to have effect*** after the ***expiry of a period of 1 year*** from the ***date of the order***.

13. CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS - SECTION 84

Where any ***notice of demand*** in respect of any tax, penalty, interest or any other amount payable is served upon any person and ***any appeal or revision application is filed*** or any other proceedings is initiated in respect of such Government dues, then –

- If such Government dues are ***enhanced*** in such appeal, revision or other proceedings –
  - the Commissioner shall serve ***another notice of demand*** in respect of the ***excess amount***.
  - Any ***recovery proceedings*** in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings ***may be continued*** from the stage at which such proceedings stood immediately before such disposal, without the service of any fresh notice of demand.
- If such Government dues are ***reduced*** in such appeal, revision or in other proceedings –
  - it shall ***not be necessary*** for the Commissioner to serve upon the taxable person ***a fresh notice of demand***,
  - the Commissioner shall ***give intimation of such reduction*** to him and to the ***appropriate authority*** with whom recovery proceedings is pending, 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.

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14. IMPORTANT DEFINITIONS

14.1 - Adjudicating authority

Adjudicating authority means any authority, appointed or authorised to ***pass any order or decision*** under this Act, but ***does not include*** –

- the Central Board of Indirect Taxes and Customs, or
- the Revisional Authority, or
- the Authority for Advance Ruling, or
- the Appellate Authority for Advance Ruling, or
- the Appellate Authority, or
- the Appellate Tribunal, and
- the Authority referred to in sub-section (2) of section 171.

14.2 - Appellate authority

Appellate Authority means an authority appointed or authorised to ***hear appeals*** as referred to in section 107.

14.3 - Appellate Tribunal

Appellate Tribunal means the Goods and Services Tax Appellate Tribunal constituted under section 109.

14.4 - Commissioner

Commissioner means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act.

14.5 - Market value

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

14.6 - Proper officer

Proper officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

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Illustration 1

Inoba Bhave is engaged in supply of taxable services. He supplies some services in the month of april and collects IGST for Rs. 15,50,000 on said supply on 18th april. However, he fails to pay tax so collected within 30 days from the due date of payment of such tax

No Show Cause Notice (SCN) has been issued to him so far. Inoba Bhave decides to discharge his tax liability, before the SCN is issued to him. He is of the view that no penalty is leviable if the payment of tax is made before issue of SCN

Illustration 2

Enlist the circumstances for which a SCN can be issued by Proper Offcier U/s 73 of CGST act. Specify the time limit for issuance of SCN as also the time period for issuance of order by the order of Proper Officer

Illustration 3

Richmond 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

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- 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.

Illustration 4

Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth Rs.50, 000 in the month of August. It has not deposited the said amount with the government. You are required to brief Mohan Enterprises, the consequences of collecting tax and not depositing the same as provided in the government as per section 76.

Illustration 5

A person is chargeable with tax in case of fraud. He decides to pay the amount due along with interest before issue of notice. Is there any immunity available to such person?

23. OFFENCES, PENALTIES & ETHICS

Contents

- Understanding different penalties for different offences.
- Understanding the circumstances where penalty can be waived.
- Understand how compounding of offence works.
- Discuss the Ethical aspects under GST Law

1. PENALTY FOR CERTAIN OFFENCES - SECTION 122

1.1 - Offences covered under Section 122

Section 122 covers ***21 offences*** for which a taxable person will be penalised. The list is further sub – categorised and enumerated below –

1. **Offences relating to invoice –**
   - Supply of any goods or services or both ***without issue of any invoice*** or issue of an ***incorrect or false invoice*** with regard to any such supply.
   - Issue of any ***invoice or bill without supply*** of goods or services or both.
   - ***Issues any invoice*** or document by ***using the registration number of another registered person***.

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2. **Offences related to payment of tax –**
   - ***Collects*** any amount as ***tax*** but ***fails to pay the same to the Government*** beyond a period of ***3 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 ***3 months*** from the date on which such payment becomes due.

3. **Offences related to TDS under Section 51 –**
   - ***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
   - ***fails to pay*** the amount deducted as tax ***to the Government***.

4. **Offences related to TCS under Section 52 –**
   - ***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
- ***fails to pay*** the amount collected as tax ***to the Government***.

5. **Offences related to ITC –**
   - ***Takes or utilises input tax credit without actual receipt*** of goods or services or both either fully or partially.
   - Takes or distributes input tax credit in ***contravention of section 20*** i.e. manner of distribution of credit by Input Service Distributor, or the rules made thereunder.

6. **Offences related to refund –**
   - Fraudulently obtains refund of tax under this Act.

7. **Offences related to books of accounts and documentation –**
   - ***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.
   - ***Transports*** any taxable goods ***without the cover of documents*** as may be specified in this behalf.
   - 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.

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8. **Offences related to registration –**
   - Is ***liable*** to be registered under this Act ***but fails to obtain registration***.
   - Furnishes any ***false information with regard to registration*** particulars, either at the time of applying for registration, or subsequently.

9. **Other offences**
   - ***Obstructs or prevents*** any ***officer in discharge of his duties*** under this Act.
   - ***Suppresses his turnover*** leading to evasion of tax under this Act.
   - ***Fails to furnish information*** or documents ***called for by an officer*** or ***furnishes false information*** or documents during any proceedings under this Act;
   - ***Supplies, transports or stores any goods*** which he has reasons to believe are ***liable to confiscation*** under this Act;
   - Tampers with, or destroys any ***material evidence*** or document;
   - Disposes off or tampers with any goods that have been ***detained, seized, or attached*** under this Act,

1.2 - Penalty for the offences covered above

The penalty for the offences covered above shall be ***higher of*** –

- Rs. ***10,000/-*** or

- Amount equivalent to –
    - tax evaded, or
    - tax not deducted under section 51, or
    - tax short deducted, or
    - deducted but not paid to the Government, or
    - tax not collected under section 52, or
    - tax short collected, or
    - collected but not paid to the Government, or
    - ITC availed of or passed on, or
    - ITC distributed irregularly, or
    - the refund claimed fraudulently

  whichever is applicable.

1.3 - Penalty for the person retaining the benefit

In many offences, two or more parties are involved. Thus, the Act has specified separate penalty to cover the ***person on whose instance such transaction is conducted and who is retaining the benefit*** for the same.

The transaction covered here are –

- ***Supply*** of any goods or services or both ***without issue of any invoice*** or issues an ***incorrect or false invoice*** with regard to any such supply; or
- Issue of any ***invoice or bill without supply*** of goods or services or both, or
- ***takes or utilises input tax credit*** without actual receipt of goods or services or both either fully or partially, or
- takes or distributes input tax credit in ***contravention of section 20***, or the rules made thereunder.

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The penalty for the transactions covered above would be an ***amount equivalent to –***

- the tax evaded, or
- ITC availed or passed on.

1.4 - Penalty for offence under Section 73

Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of –

- Rs. 10,000/- or
- 10% of the tax due from such person,

whichever is ***higher***.

1.5 - Penalty for offence under Section 74

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

utilised for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of –

- Rs. 10,000/- or
- the tax due from such person,

whichever is ***higher***

1.6 - Penalty for other offences

This category will cover any person who –

- ***aids or abets*** any of the offences specified in 1.1 above;
- ***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 summon 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***.

The above-mentioned offences will be liable to a penalty which may extend ***upto Rs. 25,000/-***.

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1.7 - Penalty under Section 122(1B)

This sub-section makes an E-commerce operator (ECO) liable to penalty if it ***permits the supply through it by an unregistered person***, allows inter-State supply through it by a person not so eligible or fails to furnish the correct details in ***Form GSTR-8*** with respect to any outward supply of goods through it by a person exempted from registration under CGST Act.

Under CGST/SGST/UTGST Law	*IGST Law*
Rs. 10,000 or amount of tax involved	Rs. 20,000 or amount of tax involved

Whichever is higher.

1.8 - Penalty under Section 122B

If any person fails to comply with "Track and trace mechanism" u/s 148A w.r. To notified goods (or) persons to monitor movement of goods throughout the supply chain. They must affix Unique Identification Marking (UIM) on such goods.

Such Person shall be liable for penalty for the amount of Rs. 1,00,000 (or) 10% of tax payable on such goods, whichever is Higher.

1.9 – Special Points on Monetary Limits

Basis for Determining Proper Officer (Sec. 74A)	The proper officer shall be determined **only on the basis of tax amount demanded** under Section 74A. **Penalty is excluded** for this calculation.
Exceeding Monetary Limit in Subsequent Statement	If the original notice is issued within the officer's monetary limit, but a **later statement increases the tax demand beyond that limit**, the matter must be handled by the **higher-ranked officer** having jurisdiction.
When Fraud/Suppression Not Established (Post Appeal)	If the appellate authority/tribunal/court holds that **fraud or suppression is not proved**, then the **same adjudicating officer who issued the original SCN** shall determine the revised penalty payable (as a non-fraud case).
SCN Involving Both CGST & IGST (Sec. 74A)	Where a notice under Section 74A involves demand of **both Central Tax and Integrated Tax (including cess)**, the proper officer is determined based on the **combined amount of CGST + IGST + Cess**.
Penalty Proceedings under Sec. 127 (for Sec. 122 Penalty)	Where SCN under Section 127 seeks penalty under Section 122 involving **both CGST and IGST**, the proper officer is determined based on the **combined penalty amount (CGST + IGST)**.

2. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN - SECTION 123

Section 150 talks about information return. When a person is required to furnish information return and he has not furnished the same within the time specified in terms of sub- section (1) or (2), he may be served upon with a notice under section 150 (3) requiring him to furnish the information return within a period not exceeding 90 days from the date of service of notice.

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If the said person still fails to furnish the return within the period specified in notice issued under section 150 (3), the proper officer may direct that such person shall be liable to pay a penalty of –

Rs. 100 for each day of the period during which the failure to furnish such return continues, ***subject to a maximum of Rs. 5,000***.

3. FINE FOR FAILURE TO FURNISH STATISTICS - SECTION 124

3.1 - Applicability of the section

Section 124 is applicable when any person who is ***required to furnish any information*** or return under section 151 –

- ***fails*** to furnish such information or return without any reasoable course, or
- ***wilfully furnishes*** or causes to furnish any information or return which he knows to be ***false***.

3.2 - Fine applicable

- The person shall be punishable with a fine which may ***extend to Rs. 10,000***.
- In case of a ***continuing offence*** - fine may extend to ***Rs. 100 for each day*** after the first day during which the offence continues subject to a ***maximum limit of Rs. 25,000***.

4. GENERAL PENALTY - SECTION 125

Any person, who ***contravenes any of the provisions*** of this Act or any rules made thereunder for which ***no penalty is separately provided*** for in this Act, shall be liable to a penalty which may ***extend to Rs. 25,000***.

5. GENERAL DISCIPLINES RELATED TO PENALTY - SECTION 126

Section 126 talks about the general disciplines which should be followed by the proper officer before levy of penalty. These disciplines are enumerated below –

- Penalty shall ***not*** be imposed for –
  - ***minor breaches*** (i.e if the amount of tax involved is ***less than Rs. 5,000***) of tax regulations, or
  - procedural requirements and
  - any ***omission or mistake*** in documentation which is ***easily rectifiable*** (i.e. apparent on the face of record) and made without fraudulent intent or gross negligence.
- The penalty imposed under this Act shall ***depend on the facts and circumstances*** of each case and shall be commensurate with the degree and severity of the breach.
- No penalty shall be imposed on any person without giving him an ***opportunity of being heard***.
- The officer shall specify the following while levying the penalty –
  - the ***nature*** of the breach and
  - the applicable ***law, regulation or procedure*** under which the amount of penalty for the breach has been specified.

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- When a ***person voluntarily discloses*** the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer, the proper officer may consider this ***fact as a mitigating factor when quantifying a penalty*** for that person.
- The provisions of this section shall ***not apply*** in such cases where the ***penalty*** specified under this Act is either ***a fixed sum*** or ***expressed as a fixed percentage.***

6. POWER TO IMPOSE PENALTY IN CERTAIN CASES - SECTION 127

The proper officer shall have ***power to levy penalty*** if he is of the view that a person is liable to a penalty and the same is not covered under any proceedings under –

- section ***62*** i.e., assessment of non-filers of returns, or
- section ***63*** i.e., assessment of unregistered person, or
- section ***64*** i.e., summary assessment, or
- section ***73*** i.e., determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts, or
- section ***74*** i.e., determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts, or
- section ***129*** i.e., Detention, seizure and release of goods and conveyances in transit, or

- section ***130*** i.e., Confiscation of goods or conveyance and levy of penalty.

The proper officer may issue an order levying such penalty ***after giving a reasonable opportunity of being heard*** to such person.

7. POWER TO WAIVE PENALTY OR FEE OR BOTH - SECTION 128

- The government may ***waive*** the penalty ***in part or in full***, referred in –
  - section ***122***, or
  - section ***123***, or
  - section ***125***, or
  - any late fee referred to in section ***47***
- Such waiver shall be done by a ***notification*** passed by the government.
- The waiver can be done for such class of taxpayers and under such mitigating circumstances as may be specified therein on the ***recommendations of the Council***.

8. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT - SECTION 129

8.1 - Goods, conveyance and documents liable to detention or seizure

When any person –

- ***transports*** any goods in contravention of the provisions of the Act or rules, or
- ***stores any goods*** while they are in transit in contravention of the provisions of this Act or rules

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all such ***goods and conveyance*** used as a means of transport for carrying the said goods and ***documents relating to such goods and conveyance*** shall be liable to detention or seizure.

However, no such goods or conveyance shall be detained or seized without ***serving an order*** of detention or seizure on the person transporting the goods.

8.2 - Release of the goods, conveyance and documents when owner comes forward

Where the owner of the goods comes forward for payment of such tax and penalty, the goods shall be released on payment of –

- the applicable ***tax***, and
- ***penalty*** equal to ***200% of the tax payable*** on such goods

In case of ***exempted goods***, on payment of the ***lower of*** –

- an amount equal to ***2% of the value of goods***, or
- Rs. 25,000/-

The goods shall be released if instead of making the payment ***a security is furnished*** for the amount equivalent to the amount of tax and penalty calculated above.

8.3 - Release of the goods, conveyance and documents when owner does not come forward

Where the owner of the goods does not come forward for payment of such tax and penalty, the goods shall be released on payment of –

- the applicable ***tax***, and
- ***penalty*** equal to ***50% of the value of goods or 200% of the tax payable on such goods whichever is higher.***

In case of ***exempted goods***, on payment of the ***lower of*** –

- an amount equal to ***5% of the value of goods***, or
- Rs. 25,000/-

The goods shall be released if instead of making the payment ***a security is furnished*** for the amount equivalent to the amount of tax and penalty calculated above.

8.4 - Time limit for payment

- The payment of tax and penalty shall be done ***within 15 days*** of such detention or seizure.
- Where the detained or seized goods are ***perishable or hazardous*** in nature or are ***likely to depreciate*** in value with passage of time, the said period of 15 days may be ***reduced*** by the proper officer.
- If the person is unable to pay within the specified time, ***further proceedings*** shall be initiated under ***Section 130***.

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8.5 - Other provisions to be followed

- The provisions of section 67(6) i.e. the goods and or conveyance shall be ***released on provisional basis*** on payment of applicable tax and penalty or on furnishing of security, as the case may be shall, mutatis mutandis, ***apply for detention and seizure*** of goods and conveyances.
- The proper officer detaining or seizing goods or conveyances shall ***issue a notice within 7 days*** of such detention or seizure specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty (as specified in 8.2 and 8.3 above).
- No tax, interest or penalty shall be determined without giving the person concerned an ***opportunity of being heard***.
- On ***payment of amount of tax and penalty*** (as specified in 8.2 and 8.3 above), ***all proceedings*** in respect of the notice shall be ***deemed to be concluded***.
- Where the person transporting any goods or the owner of such goods ***fails to pay*** the amount of penalty under sub - section (1) ***within 15 days*** from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):
    - ***Provided that*** the conveyance shall be released
        - on payment by the transporter of penalty under sub-section (3) or

- Rs. 1,00,000

whichever is less:

- ***Provided further*** that where the detained or seized goods are ***perishable or hazardous in nature*** or are ***likely to depreciate in value with passage of time***, the said period of ***15 days*** may be reduced by the proper officer

9. CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY - SECTION 130

9.1 - Circumstances leading to confiscation of the goods

Where any person –

- ***supplies or receives any goods*** in contravention of any of the provisions of this Act or the rules with ***intent to evade payment of tax***; or
- ***does not account*** for any goods on which he is liable to pay tax; or
- supplies any goods liable to tax under this Act ***without having applied for registration***; or
- ***contravenes*** any of the provisions of this Act or the rules made thereunder with ***intent to evade payment of tax***; or
- ***uses any conveyance*** as a means of transport for carriage of goods in ***contravention of the provisions*** of this Act or the rules unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be ***liable to confiscation*** and the person shall be liable to ***penalty under section 122***.

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9.2 - Option of avoiding confiscation of the goods

Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give an ***option to pay fine*** (as the said officer thinks fit) in lieu of confiscation to the owner of the goods.

However, the points to be considered by the proper officer while imposing fine are –

- The fine shall ***not exceed*** the ***market value*** of the goods confiscated, ***less the tax chargeable*** thereon.
- The ***aggregate*** of such fine and penalty leviable shall ***not be less than*** the amount of ***penalty equal to 100% of the tax payable on such goods***
- Where any such ***conveyance is used for the carriage*** of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a ***fine equal to the tax payable on the goods being transported*** thereon.

Where any fine in lieu of confiscation is imposed, the owner shall be ***liable to any tax, penalty and charges payable*** in respect of such goods or conveyance ***in addition to the fine***.

9.3 - Other provisions to be followed

- The ***opportunity of being heard*** shall be given to the person before passing the order of confisaction of goods or conveyance or imposition of penalty.

- Where any goods or conveyance are confiscated, the ***title of such goods or conveyance*** shall thereupon ***vest in the Government***.
- The proper officer adjudging confiscation shall ***take and hold possession of the things confiscated*** and every ***Police officer shall assist him*** in taking and holding such possession, on the requisition of such proper officer.

9.4 - Disposal of goods or conveyance

- The goods or conveyance can be disposed after giving a ***reasonable time to pay fine*** in lieu of confiscation.
- Such reasonable time ***shall not exceed 3 months***.
- Before disposal, the proper officer shall satisfy himself that the confiscated goods or conveyance are ***not required in any other proceedings*** under this Act.
- After the diposal, the ***sale proceeds*** shall be ***deposited with the government***.

10. CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS - SECTION 131

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

11. PUNISHMENT FOR CERTAIN OFFENCES - SECTION 132

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Section 132 talks about ***major offences*** under the Act which warrant institution of criminal proceedings and prosecution.

A person is prosecuted for any offence under section 132 only with the ***previous sanction of the Commissioner***.

11.1 - Offences covered under Section 132

Section 132 covers persons who commits, or causes to commit and retain the benefits arising out of, any of the following offences namely –

a. ***Supplies any goods or services*** or both ***without issue of any invoice*** with the ***intention to evade tax;***
b. Issues any ***invoice or bill without supply*** of goods or services or both leading to wrongful availment or utilisation of input tax credit or refund of tax;
c. ***Avails input tax credit*** using such invoice or bill referred to in clause (b);
d. ***Collects any amount as tax*** but ***fails to pay the same to the Government*** beyond a period of ***3 months*** from the date on which such payment becomes due;
e. ***Evades tax, fraudulently avails input tax credit or fraudulently obtains refund*** and where such offence is not covered under clauses (a) to (d);
f. ***Falsifies or substitutes financial records*** or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due;

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;

Attempts to commit, or ***abets*** the commission of any of the offences mentioned

11.2 - Punishment for offences covered above

The punishment is segregated on the basis of amount of –

- tax evaded, or
- ITC wrongly availed or utilised, or
- refund wrongly taken, or
- Issuance of invoice without supply

Amount involved	*Punishment*
More than 1 crore but upto 2 crores	Imprisonment for a term which may extend to ***1 year*** and with ***fine – Only in case of Issuing invoice without actual supply***
More than 2 crores but upto 5 crores	Imprisonment for a term which may extend to ***3 years*** and with ***fine***
More than 5 crores	Imprisonment for a term which may extend to ***5 years*** and with ***fine***

The term of imprisonment shall ***not be less than 6 months*** in all the 3 cases unless some special and adequate reasons to the contrary is recorded in the judgment of the Court.

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In cases where he ***commits or abets the commission*** of an offence specified in clause ***(f) i.e., falsifies or substitutes financial records*** he shall be punishable with –

- imprisonment for a term which may extend to ***6 months***, or
- fine, or
- both.

11.3 - Punishment for repeated offence

Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be ***punishable for the second and for every subsequent offence*** with –

- imprisonment for a term which may extend to ***5 years*** and
- fine

The term of imprisonment shall ***not be less than 6 months*** unless some special and adequate reasons to the contrary is recorded in the judgment of the Court.

11.4 - Cognizable and non – cognizable offences

The following offences shall be cognizable and non – bailable –

(a) ***Supplies any goods or services*** or both ***without issue of any invoice*** with the ***intention to evade tax;***

(b) Issues any ***invoice or bill without supply*** of goods or services or both leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) ***Avails input tax credit*** using such invoice or bill referred to in clause (b);

(d) ***Collects any amount as tax*** but ***fails to pay the same to the Government*** beyond a period of ***3 months*** from the date on which such payment becomes due.

However, the above offences will be cognizable ***only if*** the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken ***exceeds Rs. 5 crores***.

Apart from the offences mentioned above, ***all the other offences shall be non – cognizable*** and bailable.

Note –

Cognizable offences are serious category of offences in respect of which the officers have the authority to make an arrest without a warrant and to start an investigation with or without the permission of a Court whereas ***non – cognizable offence*** are relatively less serious offences in respect of which the officers do not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order.

12. LIABILITY OF OFFICERS AND CERTAIN OTHER POWERS - SECTION 133

12.1 - Persons covered under Section 133

Section 133 covers –

- Any person engaged in connection with the ***collection of statistics under section 151*** or compilation or computerisation thereof,
- Officer of central tax having ***access to information*** specified under section ***150(1)***,
- Persons engaged in connection with the ***provision of service on the common portal***,
- The ***agents*** of common portal.

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12.2 - Act liable for punishment

The above persons shall be liable to punishment if they ***wilfully disclose any information*** or the ***contents of any return*** otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence.

However, a person who is a ***government servant*** shall be prosecuted for any offence under this section only after obtaining ***previous sanction of the Government*** and the person who is ***not a government servant*** shall be prosecuted for any offence under this section only after obtaining ***previous sanction of the Commissioner***.

12.3 - Punishment

The punishment for the above act shall be –

- imprisonment for a term which may extend to ***6 months***, or
- with ***fine*** which may extend to ***Rs. 25,000***, or
- with both

13. COGNIZANCE OF OFFENCES - SECTION 134

- ***The court shall take cognizance*** of any offence punishable under this Act or the rules made thereunder ***only after obtaining previous sanction of the Commissioner***.
- ***No court inferior to that of a Magistrate of the First Class***, shall try any such offence.

14. PRESUMPTION OF CULPABLE MENTAL STATE - SECTION 135

14.1 - Meaning of the term 'Culpable mental state'

The expression "culpable mental state" includes ***intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact***.

While committing an act, a "culpable mental state" is a state of mind wherein –

- the act is ***intentional;***
- the act and its implications are ***understood and controllable;***
- the person committing the act was ***not coerced*** and even overcomes hurdles to the act committed;
- the person believes or has reasons to ***believe that the act is contrary to law***.

14.2 - Provision covered

- In the 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***.
- It shall, however, be a ***defense for the accused*** to prove the fact that ***he had no such mental state*** with respect to the act charged as an offence in that prosecution.
- 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.

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15. RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES - SECTION 136

A statement made and signed by a person on appearance in ***response to any summons issued under section 70*** during the course of any inquiry or proceedings under this Act shall be ***relevant for the purpose of proving*** the truth of the facts in any prosecution for an offence under this Act, if the person is –

- dead, or
- cannot be found, or
- incapable of giving evidence, or
- kept out of the way by the adverse party, or
- whose presence cannot be obtained without an amount of delay or expense which is considered unreasonable by the court under the circumstances of the case, or
- 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.

16. OFFENCES BY COMPANIES - SECTION 137

16.1 - Offence by a company

Where an offence is committed by a company, the below mentioned persons shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly –

- ***Every person*** who was in ***charge of and was responsible*** for the conduct of business of the Company ***at the time the offence was committed***.
- The company itself.
- Any ***director, manager, secretary or other officer*** of the company, if it is proved that the offence has been committed with the ***consent or connivance of*** or is ***attributable to any negligence*** on the part of such person.

However, the person shall ***not be liable*** to punishment if he proves that the offence was ***committed without his knowledge*** or that he had ***exercised all due diligence to prevent*** the commission of such offence.

16.2 - Offence by a partnership firm / LLP / HUF / trust

Where an offence is committed by a partnership firm / LLP / HUF / trust, the ***partner or karta or managing trustee*** shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

However, for an offence that has been committed with the ***consent or connivance of or is attributable to any negligence*** on the part of any partner/ member/ trustee, manager, secretary or other officer, such person shall also be deemed to be guilty.

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However, any person shall ***not be liable*** to punishment if he proves that the offence was ***committed without his knowledge*** or that he had ***exercised all due diligence to prevent*** the commission of such offence.

17. COMPOUNDING OF OFFENCES - SECTION 138

17.1 - Provisions to be followed for compounding

- Compounding can be done for ***any offence*** committed under this Act.
- Such compounding may be ***done before or after*** the institution of ***prosecution***.
- Compounding can be done by the ***Commissioner***.
- The person accused ***needs pay the compounding amount*** to the Central government ot the state government, as the case may be.
- On payment of such compounding amount, ***no further proceedings*** shall be initiated under this Act against the accused person in respect of the same offence.
- If any ***criminal proceedings have already been initiated*** against the person for the said offence, the same shall ***stand abated***.

17.2 - Procedure to be followed for compounding

- The applicant shall ***make the application to the Commissioner*** for compounding of the offence in ***Form GST CPD-01***.
- On receipt of the application, the Commissioner shall ***call for a report*** from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.
- The Commissioner can ***allow the application*** indicating the compounding amount and ***grant him immunity*** from prosecution if he is ***satisfied*** that –
    - the applicant has ~~***co-operated*** in the proceedings before him and~~
    - ***made full and true disclosure*** of facts relating to the case,
- If the Commissioner is ***not satisfied***, he can reject such application ***within 90 days*** of the receipt of the application and ***record the grounds of rejection***.
- The applicant shall be given an ***opportunity of being heard*** before making any decision.
- The application shall ***not be allowed*** unless the ***tax, interest and penalty*** liable to be paid ***have been paid*** in the case for which the application has been made.
- The applicant shall ***pay the compounding amount*** as ordered by the Commissioner within a period of ***30 days*** from the date of the receipt of the order and shall furnish the proof of such payment to him.
- In case the applicant ***fails to pay the compounding amount*** within the specified time, the ***order shall be vitiated and be void***.
- ***Immunity granted to a person may be withdrawn*** by the Commissioner at any time, if he is satisfied that such person had ***concealed any material particulars*** or had ***given false evidence*** in the course of the compounding proceedings.
- Thereupon, such person may be ***tried for the offence*** with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.

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17.3 – Determination of amount for compounding

The Commissioner shall determine the compounding amount under sub-rule (3)

S. No.	Offence	Compounding amount - when amount exceeds 5 cr	Compounding amount - when amount exceeds 2 cr
1.	Offence specified in section 132(1)(a)(c)(d)(e)	Up to 75% of the amount involved subject to minimum of 50% of such amount	Up to 60% of the amount involved subject to minimum of 40% of such amount.
2.	Offence specified in section 132(1)(f)(h)(i)	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
3.	Attempt to commit the offences/abets the commission of offences mentioned in 132(1) (a), (c) to (f) & (h) and (i).	Amount equivalent to 25% of such amount involved.	Amount equivalent to 25% of such amount involved.

- Provided that where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.
- Now, the compounding application can be accepted only if the applicant has made full and true disclosure of facts relating to the case.
- In case offence falls under more than one category: the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

17.4 - Cases where compounding is not allowed

The compounding of offence is not allowed to the person who –

- has been ***allowed to compound once*** in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of section 132(1) or attempts to commit or abets the commission of those offences;
- person who has been accused of committing and offence under clause (b) of sub section (1) of Section 132
- has been ***convicted*** for an offence under this Act ***by a court***;
- any ***other class of persons or offences*** as may be prescribed.

18. ETHICS UNDER GST

18.1 – Dictionary meaning

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- The Oxford Dictionary defines the term "Ethics" as – ***the moral principle that governs a person's behaviour or how an activity is conducted***.
- Ethics provides a ***framework*** for ***distinguishing between right and wrong***, guiding decision-making, and determining what is considered ***morally acceptable*** in a given context.

18.2 – Role of Ethics in GST

- Ethics are fundamental to the effective functioning of any taxation system; this also holds true for the Goods and Services Tax (GST) regime in India.
- Ethical conduct ***contributes to increased regulatory compliance*** and ***reduced tax evasion*** which in turn leads to ***increased Government revenue collection***.
- This tax revenue can be used for ***public welfare*** and ***development projects***.
- It also helps in creating a ***fair***, ***transparent***, and ***trustworthy*** tax environment and reduces uncertainty that supports economic growth and development.
- Unethical practices like issuing bogus invoice without underlying supply, wrongful availment of ITC, etc. not only undermine the tax revenues, but also create an uneven playing field for honest taxpayers.
- Ethical behaviour may also reduce tax-related disputes and litigations.

18.3 – Role or Chartered Accountant in ensuring ethics under GST

- The professional behaviour of a Chartered Accountant is governed by a set of ethical guidelines and principles - known as ***Code of Ethics*** - laid down by the ***ICAI***.

- Every Chartered Accountant has to abide by this code of ethics.
- It encourages the Chartered Accountants to be ***honest***, ***fair***, and ***professional*** in their working and advocates to follow the rules to ensure that they are doing the right thing for their clients and the public at large.
- The fundamental principles are:
    - ***integrity***,
    - ***objectivity***,
    - ***professional competence***,
    - ***due care***,
    - ***confidentiality***, and
    - ***professional behaviour***.
- The Chartered Accountants Act, 1949 prescribes the ***disciplinary action*** if a Chartered Accountant is found guilty of any Professional or Other Misconduct.
- A Chartered Accountant needs to follow ***ethical conduct*** while discharging his professional duties under the Goods and Services Tax (GST) law, namely,
    - compliance functions,
    - furnishing certifications/reports and
    - advisory roles,
    - by adhering to a set of principles and practices that promote
        - integrity,
        - transparency, and
        - compliance.
- He should ***maintain professional knowledge and skill*** at the level required to ensure that a client or employer receives competent professional service based on latest applicable positions of GST law.
- Chartered Accountants play a crucial role in ensuring GST compliance within their clients' organizations.
- Generally, Chartered Accountants are responsible for ensuring the maintenance of accurate and detailed records of all GST-related transactions. This includes invoices, receipts, and other relevant documents. Such ***meticulous record-keeping is a legal requirement as well as an ethical duty of the Chartered Accountant***.
- A Chartered Accountant, ***who holds a certificate of practice*** and ***who has not been debarred from practice***, can also appear on behalf of his client before a GST officer, GST Appellate Authority or GST Appellate Tribunal in connection with any proceedings under GST law, as an ***authorised representative*** of the client.
- Furthermore, Chartered Accountants ***play a vital role in the GST ecosystem*** by providing certifications that affirm compliance with GST laws and regulations. These certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.
- They primarily aim at curbing the unethical practices and preventing the leakage of revenue. Thus, it is the duty of every Chartered Accountant to ***exercise utmost care and due diligence while granting these certifications.***
- While providing said certification, the Chartered Accountant has to ***comply*** with the ***ethical requirements*** of the ***Code of Ethics*** issued by the ICAI, the relevant applicable requirements of the ***Standard on Quality Control (SQC - 1)***

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18.4 - Certifications/reports to be furnished by a Chartered Accountant required under the GST law

- Certification of the amount of ***ITC claimed at the time of registration***/voluntary registration or switching to regular tax paying status or coming into tax-paying status - [Sub-section (1) of section 18 read with rule 40]
- Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the ***transfer of liabilities*** [Section 18(3) read with rule 41]
- Certification that in case of ***refund claim exceeding Rs. 2 lakhs*** by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]
- Certification of the ***amount of ITC to be reversed*** on cancellation of registration or on switching to composition levy/exit from taxpaying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]
- ***Audit report*** under section 66

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llustration 1

From the details given below, determine maximum amount of fine leviable u/s130 of CGST Act-2017,

1. goods liable for confiscation
2. conveyance used for carriage of such goods

Value of goods excluding tax	15,00,000
Market value of goods	20,00,000
GST on goods	3,60,000

without proper documents, If yes, explain the provisions under CGST Act-2017?

Illustration 2

From the following details calculate the amount to be paid for release of goods detained/seized u/s129 of CGST Act-2017, if owner doesn't come forward for payment,

Value of goods	30,00,000
GST	5,40,000
GST paid	3,60,000

Would your answer be different if the goods are exempted and value remain same?

Illustration 3

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XYZ carries goods worth Rs.80,000(IGST@18%) from Vadodara to Pune and in transit proper officer intercepted the same u/s68 and found contravention, Calculate penalty u/s129 if,

1. XYZ comes forward for payment of tax
2. XYZ not comes forward for payment of tax

Illustration 4 (Questions IV)

Examine the implications as regards the bail ability on quantum of punishments on prosecution in respect of the following cases pertaining to the month of December under CGST Act, 2017.

- X collects ₹2,45,00,000 as tax from its clients and deposits ₹2,41,00,000 with central government. It is found that he has falsified financial records and has not maintained proper records
- Y collects ₹5,50,00,000 as tax from its clients. But deposits only ₹30,00,000 with the central government

What will be the implications with regard to punishment with respect to prosecution of X and Y for the offences? What will be the effect if X and Y repeat the offences?

24. ADVANCE RULING

Contents

- Understanding the circumstances in which advance ruling can be sought
- Understanding the powers of AAR and AAAR.
- Understanding the procedure to be followed for advance ruling.
- Understanding the circumstances where advance ruling is void.

1. DEFINITIONS OF ADVANCE RULING - SECTION 95

Section 95 contains the definitions relevant for this chapter which are enumerated below –

1. **Advance ruling –**
   - Advance ruling means a ***decision provided*** by the Authority or the Appellate Authority or the National Appellate Authoity to an applicant on matters or on questions specified in section 97 or section 100 or of Section 101C.
   - These questions are in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

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2. **Appellate Authority –**
   Appellate Authority means the Appellate Authority for Advance Ruling ***referred to in section 99***.
3. **National Appellate Authority –**
   National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A
4. **Applicant –**
   Applicant means any person ***registered*** or ***desirous of obtaining registration*** under this Act.
5. **Application –**
   Application means an application made to the Authority under section 97.
6. **Authority –**
   Authority means the Authority for Advance Ruling referred to in section 96.

2. AUTHORITY FOR ADVANCE RULING - SECTION 96 AND APPELLATE AUTHORITY FOR ADVANCE RULING - SECTION 99

- The Authority for advance ruling (AAR) and the Appellate Authority for Advance Ruling (AAAR) ***constituted under*** the provisions of ***SGST Act or UTGST Act*** shall be ***deemed to be the AAR and AAAR*** respectively for that State or Union territory under the CGST Act also.
- The Government shall ***appoint officers not below the rank of Joint Commissioner as member of the AAR***.

- Since, AAR and AAAR is constituted under the respective State/ Union Territory Act and not the Central Act, the ruling given 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.

3. APPLICATION FOR ADVANCE RULING - SECTION 97

3.1 - Cases in which advance ruling can be sought

The advance ruling can be sought in the following cases –

1. ***Classification*** of any goods or services or both.
2. ***Applicability of a notification*** issued under the provisions of this Act.
3. Determination of ***time and value*** of supply of goods or services or both.
4. ***Admissibility of input tax credit*** of tax paid or deemed to have been paid.
5. Determination of the ***liability to pay tax*** on any goods or services or both.
6. Whether applicant is ***required to be registered***.
7. 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.

3.2 - Process for advance ruling

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- A person desirous to obtain advance ruling shall submit an application in ***Form GST ARA-01***.
- The form shall be accompanied by a ***fees of Rs. 5,000***.

4. PROCEDURE ON RECEIPT OF APPLICATION - SECTION 98

4.1 - Admission or rejection of the application

- On receipt of an application, the Authority forward a ***copy to the concerned*** officer and may call upon him to ***furnish the relevant records***.
- Where any records have been called for, such records shall be ***returned*** to the said concerned officer ***as soon as possible***.
- The Authority shall pass an order to ***admit or reject*** the application after –
  - ***examining*** the ***application*** and the ***records*** called for and
  - ***hearing the applicant*** or his authorised representative and
  - ***hearing the concerned officer*** or his authorised representative
- The Authority shall ***not admit the application*** where –
  - the question raised in the application is ***already pending***, or
  - ***decided in any proceedings*** in the case of an applicant.
- No application shall be rejected unless an ***opportunity of being heard has been given*** to the applicant.
- The ***reasons for rejection*** of an application shall be specified in the order.
- A copy of every order made shall be ***sent*** to the ***applicant and to the concerned officer***.

4.2 - Ruling by the authority

- Where an application is admitted, the Authority shall ***pronounce its advance ruling*** on the question after –
  - ***examining such further material*** placed before it by the applicant or obtained by the Authority and
  - after providing an ***opportunity of being heard*** to the ***applicant*** or his authorised representative and
  - after providing an ***opportunity of being heard*** to the ***concerned officer*** or his authorised representative.
- A copy of the advance ruling ***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.

4.3 - Difference in opinion of the members

Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state those points and ***make a reference to the Appellate Authority for hearing and deciding*** on such question.

4.4 - Time limit

The Authority shall pronounce its advance ruling in writing ***within 90 days*** from the ***date of receipt*** of application.

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5. APPEAL TO APPELLATE AUTHORITY - SECTION 100

5.1 - Who can file the appeal?

- The appeal to the AAAR can be filed by –
  - the concerned officer, or
  - the jurisdictional officer, or
  - an applicant
- aggrieved by any advance ruling pronounced by AAR under Section 98.

5.2 - Time limit for filing the appeal

- The appeal shall be filed within a period of ***30 days*** from the date on which the ***ruling was communicated*** to the concerned officer, the jurisdictional officer and the applicant.
- The AAAR may allow it to be presented within a ***further period not exceeding 30 days*** if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period.

5.3 - Procedure for filing the appeal

- The appeal has to be in the prescribed form and has to be verified in the prescribed manner.

- An appeal has to be filed by the applicant along with ***fee of Rs. 10,000***.
- However, if the ***concerned officer or jurisdictional officer is aggrieved*** by the decision of AAR, then ***no fee is required*** to be paid.

6. ORDERS OF APPELLATE AUTHORITY - SECTION 101

6.1 - Order by the AAAR

- The Appellate Authority may pass such order as it thinks fit, ***confirming or modifying the ruling*** appealed against or referred to.
- Such order shall be passed after giving the ***opportunity of being heard*** to the parties to the appeal or reference.
- A copy of the advance ruling ***duly signed by the members and certified*** in such manner as may be prescribed shall be ***sent*** to –
  - the applicant,
  - the concerned officer
  - the jurisdictional officer and
  - AAR.

6.2 - Time limit for order

The order shall be passed within a period of ***90 days*** from the date of ***filing of the appeal***.

6.3 - Difference in opinion of the members

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Where the members of the Appellate Authority differ on any point, it shall be deemed that ***no advance ruling can be issued*** in respect of the question under the appeal.

7. RECTIFICATION OF ADVANCE RULING - SECTION 102

- The AAR or AAAR may ***amend any order*** passed by it under section 98 or section 101 to ***rectify any error apparent on the face of the record***.
- Such error can be noticed by the AAR or AAAR on its ***own accord*** or ***bought to attention*** by–
  - the concerned officer, or
  - the jurisdictional officer, or
  - the applicant or the appellant
- However, such error must be bought to attention ***within 6 months*** from the ***date of the order***.
- The appellant shall be given an ***opportunity of being heard*** if the rectification has the effect of –
  - enhancing the tax liability or
  - reducing the amount of admissible input tax credit.

8. APPLICABILITY OF THE ADVANCE RULING - SECTION 103

- The advance ruling pronounced by the AAR or AAAR shall be binding ***only on*** the –
  - ***applicant*** who had sought it and

- ***concerned officer*** or the ***jurisdictional officer*** in respect of the applicant.
- The advance ruling shall be ***binding unless*** the ***law, facts or circumstances*** supporting the original advance ruling ***have changed***.

9. APPLICABILITY OF THE ADVANCE RULING - SECTION 104

- The advance ruling can be ***declared void ab-initio*** if AAR and AAAR finds that the ruling has been obtained by the applicant / appellant by –
  - fraud or
  - suppression of material facts or
  - misrepresentation of facts.
- Consequently, ***all the provisions*** of the CGST Act shall ***apply*** to the applicant as if such advance ***ruling had never been made***.
- However, the period when ***advance ruling was given and up to the period when the order declaring it to be void is issued*** shall be ***excluded*** while computing the time period specified in Section 73 or 74.
- An order declaring advance ruling to be void can be passed only after ***hearing the applicant / appellant***.
- A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.

10. POWERS AND PROCEDURE OF AUTHORITY AND APPELLATE AUTHORITY - SECTION 105 AND 106

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- The AAR and AAAR are vested with the ***powers of a civil court under Code of Civil Procedure, 1908***, for –
  - discovery and inspection,
  - enforcing the attendance of a person and examining him on oath,
  - issuing commissions and compelling production of books of account and other records.
- Both the authorities are ***deemed to be a civil court*** for the purposes of section ***195 of the Code of Criminal Procedure, 1973***.
- However, both the authorities are ***not treated as civil court*** for the purpose of ***Chapter XXVI of the Code of Criminal Procedure, 1973***.
- Any proceeding before the authority shall be ***deemed to be judicial proceeding*** under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860.
- The AAR and AAAR also have the ***power to regulate their own procedure***.

Illustration 1 (Advance Rulings)

State whether following statements are true or false w.r.t. provisions relating to Advance Ruling.

i. Illustrations on which the advance ruling can be sought under this Act, include rate of tax applicable to a particular supply and place of supply.
ii. Rectification of advance ruling is not possible once the Authority for Advance Ruling has passed the orders.
iii. The Authority for Advance Ruling shall pronounce its ruling within 90 days from the date of receipt of application.
iv. Authority for Advance Ruling may accept application even if the Illustration raised in the application is already pending or decided in any proceedings under any of the provisions of the CGST Act, 2017 qua the applicant

Illustration 2 (Advance Rulings)

State whether following statements are true or false w.r.t. provisions relating to Advance Ruling.

i. Questions on which the advance ruling can be sought under this Act, include rate of tax applicable to a particular supply and place of supply.
ii. Rectification of advance ruling is not possible once the Authority for Advance Ruling has passed the orders.
iii. The Authority for Advance Ruling shall pronounce its ruling within 90 days from the date of receipt of application.
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iv. Authority for Advance Ruling may accept application even if the question raised in the application is already pending or decided in any proceedings under any of the provisions of the CGST Act, 2017 qua the applicant.
v. Authority for Advance Ruling may, by order, declare such advance ruling void ab- initio if it finds out that such ruling is obtained by suppression of material facts, fraud, or misrepresentation of facts.

Choose from following options:

a. False, False, True, False, True
b. False, True, True, False, True
c. True, True, False, False, True
d. False, False, False, False, True

Illustration 3 (Advance Rulings)

Ranjan intends to start selling certain goods in Delhi. However, he is not able to determine

i. the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and
ii. the place of supply if he supplies said goods from Delhi to buyers in U.S.

Ranjan's tax advisor has advised him to apply for the advance ruling in respect of these issues.

He told Ranjan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Ranjan agreed with his view, but has some apprehensions.

In view of the information given above, you are required to advise Ranjan with respect to following:

i. The tax advisor asks Ranjan to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Ranjan needs to get registered?
ii. Can Ranjan seek advance ruling to determine
    a. the classification of the goods proposed to be supplied by him and
    b. the place of supply, if he supplies said goods from Delhi to buyers in U.S?
iii. Ranjan is apprehensive that if at all advance ruling is permitted to be sought, he has to seek it every year. Whether Ranjan's apprehension is correct?
iv. The tax advisor is of the view that the order of Authority for Advance Ruling (AAR) is final and is not appealable. Whether the tax advisor's view is correct?
v. Sambhav - Ranjan's friend - is a supplier registered in Delhi. He is engaged in supply of the goods, which Ranjan proposes to supply at the same commercial level that Ranjan proposes to adopt.

He intends to apply the classification of the goods as decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi. Whether Sambhav can do so?

Illustration 4 (Advance Rulings)

Briefly explain the provisions of CGST Act regarding questions for which Advance Ruling can be sort.

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Illustration 5 (Advance Rulings)

Briefly explain the procedure to be followed by AAR on receipt of application under Section 98 of CGST Act.

25. MISCELLANEOUS PROVISIONS

Contents

- Understanding various provisions of CGST Act.
- Understanding various provisions of IGST Act.
- Understanding separate provision in case of a company undergoing Insolvency.

This chapter consist of different provisions of CGST Act and IGST Act.
We shall discuss this chapter is different parts bundled with same category of sections together.

DOCUMENTS – SECTION 144 AND 145

1. PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES - SECTION 144

Section 144 talks about certain presumptions related to the documents.

Presumption generally means 'an act of accepting that something is true until it is proved not true'.

1.1 - Presumption given under the Section

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Where any document is ***tendered by the prosecution in evidence*** against a person or any other person who is tried jointly with him the ***court shall*** –

- ✓ presume the ***truth of the contents*** of such document;
- ✓ presume that the ***signature*** which purports to be in the handwriting of any particular person ***is in that person's handwriting;***
- ✓ presume the ***execution or attestation*** in the document has been ***made by the person by whom it purports*** to have been so executed or attested; and
- ✓ ***admit the document*** in evidence even if they are ***not duly stamped.***

1.2 - Situation in which the presumption applies

The above presumption is applicable 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.

1.3 - Importance of Section 144

Section 144 is an important section as it ***diverts from the generally accepted provisions*** given under other Acts.

As per the Evidence Act, 1872,

- The ***contents*** of a document must be ***proved by evidence***.
- The ***signature or handwriting*** of a person on the document ***must be proved*** to be of the person of whom it is alleged to be.
- A document which is ***required by law to be attested*** shall not be used as evidence until ***at least one attesting witness has been called*** for the purpose of proving its execution, except in certain cases.

Also, as per ***The Stamp Act, 1899*** a document which is ***not duly stamped*** shall be ***inadmissible in evidence***.

However, section 144 presumes the above facts and does not require them to be proved. This implies that in case of such documents, if the said person claims that the document is not true or not signed or handwritten by him or not attested or executed by him, the burden of proof in respect of the same shall lie on him.

2. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS AND COMPUTER PRINTOUTS AS DOCUMENTS AND AS EVIDENCE - SECTION 145

2.1 - Deemed documents

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- **Micro film** of a document or the **reproduction of the image or images** embodied in such micro film (whether enlarged or not)
- **Facsimile copy** of a document
- **Statement contained in a document** and included in a printed material produced by a computer
- Any **information stored electronically** in any device or media, including any hard copies made of such information

The above documents shall be ***admissible in any proceedings*** under the Act, ***without further proof*** or production of the original.

2.3 - Certification

A certificate –

- ***identifying the document*** containing the statement and describing the manner in which it was produced;

- giving such ***particulars of any device involved*** in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer

shall constitute evidence of any matter stated in the certificate.

It may be noted that it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

FURNISHING, COLLECTING AND PUBLICATION OF INFORMATION – SECTION 151, 152, 158 AND 159

3. POWER TO COLLECT STATISTICS - SECTION 151

- If the ***Commissioner considers necessary*** to do so, he may ***direct for collection of statistics*** relating to any matter dealt with, by or in connection with the Act.
- It may be noted that the statistics can be collected only for the ***purpose of better administration*** of the Act.
- Upon such notification being issued, the Commissioner, or any person authorized by him, may ***call upon all concerned persons to furnish such information or returns*** as may be specified therein relating to any matter in respect of which statistics is to be collected.

4. BAR ON DISCLOSURE OF INFORMATION - SECTION 152

4.1 - Provision of the Act

- Any information of an individual return with respect to any matter given for the purpose of sections 150 or 151 shall ***not be published*** in a manner which ***enables any particulars to be identified as referring to a particular person*** without giving an ***opportunity of being heard*** to the person concerned.
- Such information shall ***not be used*** for the ***purpose of any proceedings*** under the Act without giving an opportunity of being heard to the person concerned.

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4.2 - Confidentiality of information

- Any ***person who is not engaged*** in the collection of statistics under this Act or compilation or computerisation thereof, shall ***not be permitted to see or have access*** to any information or any individual return referred to in section 151.
- However, the above clause will ***not be applicable*** if the information is accessed for the ***purpose of prosecution*** under this Act or any other Act for time being in force.

4.3 - Exception clause

Nothing in this section shall apply to the ***publication of any information*** relating to a class of taxable persons or class of transactions, if it is ***desirable in the public interest*** to publish such information as per ***the opinion of the Commissioner***.

5. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT - SECTION 158

5.1 - Non – disclosure of information

The below mentioned information shall ***not be disclosed*** –

- particulars contained in any ***statement made or return furnished***,
- details of ***accounts or documents produced*** even in the course of any proceedings under this Act (other than proceedings before a criminal court), or
- particulars in any ***record of any proceedings*** under this Act

5.2 - Exceptions to non – disclosure

The above clause shall not apply to disclosure of –

- any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the ***purpose of any prosecution*** under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or
- any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the ***purposes of carrying out the objects of this Act***; or
- any particulars when such disclosure is ***occasioned by the lawful exercise*** under this Act of any process for the ***service of any notice or recovery of any demand***; or
- any particulars ***to a civil court in any suit or proceedings***, to which the Government or any authority under this Act is a party, which ***relates to any matter arising out of any proceedings*** under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- any particulars to any officer appointed for the ***purpose of audit of tax receipts or refunds*** of the tax imposed by this Act; or
- any particulars where such particulars are relevant for the purposes of any ***inquiry into the conduct of any officer*** appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or
- any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of ***enabling that Government to levy or realise any tax or duty***; or
- any particulars when such disclosure is occasioned by the ***lawful exercise by a public servant*** or any other statutory authority, of his or its powers under any law for the time being in force; or
- any particulars relevant to any ***inquiry into a charge of misconduct*** in connection with any proceedings under this Act ***against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary*** to the authority empowered to take disciplinary action against the members practising the respective profession; or
- any particulars to any agency appointed for the ***purposes of data entry on any automated system*** or for the purpose of ***operating, upgrading or maintaining any automated system***

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where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

- any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or
- any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is ***desirable in the public interest***, to publish such information.

5.3 - Restrictions applicable to court

Section 158 overrides the provisions of the Indian Evidence Act, 1872. It states that ***Court shall not require any GST officer to produce before it or to give evidence*** before it in respect of the particulars referred here (in point 5.1 above). However, this restriction will not apply in respect of exceptions to non - disclosures mentioned above (in point 5.2).

6. CONSENT BASED SHARING OF INFORMATION FURNISHED BY TAXABLE PERSON – SECTION 158A

- The following details furnished by a registered person may, be shared by the common portal with such other systems as may be notified by the Government, in the prescribed manner and subject to prescribed conditions namely: —
    a. particulars furnished in the ***application for registration*** under section 25 or in the return filed under section 39 or under section 44 [Annual Return];
    b. the particulars uploaded on the common portal for ***preparation of invoice***, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68 [Inspection of goods in movement];
    c. Such other details as may be prescribed
- For the purposes of sharing details, the ***consent shall be obtained***, of—
    a. the ***supplier***, in respect of details furnished above and
    b. the ***recipient***, in respect of details furnished under (b), and under (c) only where such details include ***identity information*** of the recipient,

    in the prescribed form and manner.
- ***No action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section.***
- There shall be ***no impact on the liability to pay tax*** on the relevant supply or as per the relevant return.
- This section ***overrides*** the following sections: -
    - Section 133 - Liability of officers and certain other persons
    - Section 152 - Bar on disclosure of information
    - Section 158 - Disclosure of information by a public servant
- This provision can be ***helpful*** in many cases as follows –
    a. where the recipient of goods or services wants to confirm whether supplier of goods or services has filed returns and has paid the tax. This is because if the supplier does not pay tax, recovery can be made from recipient. In such cases, after obtaining consent from supplier, the recipient can check whether supplier as filed returns and

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paid taxes, before releasing his payment. At present, there is no mechanism by which recipient can know whether supplier has paid the taxes and filed returns

b. This provision will also be helpful to buyer for vendor registration, rating of vendors and verifying credentials of vendors

c. where the recipient of goods or services wants to confirm whether supplier of goods or services has filed returns and has paid the tax. This is because if the supplier does not pay tax, recovery can be made from recipient. In such cases, after obtaining consent from supplier, the recipient can check whether supplier as filed returns and paid taxes, before releasing his payment. At present, there is no mechanism by which recipient can know whether supplier has paid the taxes and filed returns

d. This provision will also be helpful to buyer for vendor registration, rating of vendors and verifying credentials of vendors

- The Central Government, on the recommendations of the Council, hereby notifies "***Account Aggregator***" as the systems with which information may be shared by the common portal based on consent under Section 158A of the CGST Act, 2017

6. PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES - SECTION 159

6.1 - Publication of name and other particulars

- This section gives power for publication of ***name and other particulars*** relating to any proceedings or prosecution under this Act.
- Such publication can be done if it is ***in the public interest*** to do so.
- The right of opinion on the same lies with the ***Commissioner*** or any other officer authorised by him in this behalf.
- The publication can be done in ***any manner deemed fit***.
- The names of the following can also be published –

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In case of firm	→	Names of the partners
In case of a company	→	Names of the directors, managing agents, secretaries, treasurers or managers
In case of association of persons	→	Names of the members of the association of persons

6.2 - Limitation on publication

The publication as given above can be done only when –

- ***time*** for presenting an ***appeal to the Appellate Authority*** under section 107 ***has expired*** without an appeal having been presented or
- the appeal, if presented, has been disposed of.

7. TAKING ASSISTANCE FROM AN EXPERT - SECTION 153

- Section 153 empowers the officers to take the assistance of an expert at ***any stage of scrutiny, inquiry, investigation*** or any other proceedings before him.
- Such assistance can be taken having regard to the ***nature and complexity of the case*** and the ***interest of revenue***.
- Such power is available to officers of the ***rank of Assistant Commissioner and above***.

8. ASSESSMENT PORCEEDINGS ETC. NOT TO BE INVALID ON CERTAIN GROUNDS - SECTION 160

8.1 - Proceedings covered under Section 160

The proceedings covered under this section are –

- assessment,
- re-assessment,
- adjudication,
- review,
- revision,
- appeal,
- rectification,
- notice,
- summons, or
- any other proceedings.

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8.3 - Power given under Section

Any proceedings (given above) shall ***not be deemed invalid merely by reason of any mistake, defect or omission*** therein if such proceedings are ***in substance*** and are ***according to the intents, purposes and requirements of this Act*** or any existing law.

8.4 - Validity of the service of any notice, order or communication

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 finalised.

9. RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD - SECTION 161

9.1 - Records covered under Section 161

The section applies to the following records –

- decision by any authority,
- order passed by any authority,
- notice issued,
- certificates, or
- any other document

9.2 - Power given under section

- The section gives the power to the authority who has passed or issued any decision or order or notice or certificate or any other document to ***rectify any error which is apparent on the face of record***.
- Such rectification can be done on its ***own motion*** or where such error is ***bought forward by***
    - any officer appointed under this Act, or
    - an officer appointed under the SGST / UTGST Act, or
    - the affected person ***within 3 months***.
- Where such rectification ***adversely affects any person***, the ***principles of natural justice shall be followed*** by the authority carrying out such rectification.

9.3 - Time limit for rectification

- The rectification shall ***not be done after a period of 6 months*** from the date of issue.
- However, the above period shall ***not apply*** in cases where the rectification is purely in the ***nature of correction of a clerical or arithmetical error*** arising from any accidental slip or omission.

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10. ROUNDING OFF OF TAX, ETC. - SECTION 170

- 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***.
- Where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

11. REMOVAL OF DIFFICULTIES - SECTION 172

- If any ***difficulty arises*** in giving effect to any provisions of this Act, the ***Government may make such provisions*** as may be necessary or expedient for the ***purpose of removing the said difficulty***.
- The provision can be made on the ***recommendation of the Council***.
- A ***general or special order*** can be published in the Official Gazette to give effect to the provision.
- Such provision shall ***not be inconsistent*** with the provisions of this Act or the rules or regulations made thereunder.
- Such order can be made ***within 5 years*** from the ***date of commencement of this Act***.

- Every order made under this section shall be ***laid before each House of Parliament*** as soon as it is made.

DELEGATION OF POWERS – SECTION 164, 165, 166, 167, 168 AND 168A

12. POWER OF GOVERNMENT TO MAKE RULES - SECTION 164

- The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
- The Government may ***make rules for all or any of the matters*** which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- The power to make rules shall include the ***power to give retrospective effect to the rules*** or any of them.
- However, such date shall ***not be earlier than the date*** on which the ***provisions of this Act came into force***.
- The rules may provide for a ***penalty not exceeding Rs. 10,000/-*** for committing breach of any rule.

13. POWER TO MAKE REGULATIONS (SECTION 165)

- The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.
- Thus, while the rule making power lies with the Government, the regulation making power has been delegated to the CBIC (Board).

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14. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS -SECTION 166

- Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, ***before each House of Parliament***, while it is in session.
- It shall be laid for a total period of ***30 days*** which may be comprised in one session or in two or more successive sessions.
- If both the Houses agree that –
  - ***any modification be made*** in the rule / regulation / notification; or
  - rule or regulation or notification ***should not be made***

  the rule or regulation or notification shall thereafter ***have effect only in such modified form or be of no effect***, as the case may be.
- However, any such modification or annulment shall be ***without prejudice to the validity of anything previously done*** under that rule or regulation or notification.

15. DELEGATION OF POWERS - SECTION 167

- Any power exercisable by any authority or officer under this Act can ***also be exercised by another authority or officer***.
- However, such direction shall be given by the ***Commissioner*** by way of ***notification***.

- The powers shall be ***subject to such conditions as specified*** in the notification.

16. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS - SECTION 168

16.1 - Power of the board

- The Board may ***issue orders, instructions or directions*** to the central tax officers.
- Such orders are issued for the ***purpose of uniformity in the implementation*** of this Act.
- All the officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or direction.

16.2 - Binding nature of orders, instructions or directions

- The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a ***circular is binding on the officers, but not on the assessee***.
- However, in case such circular states something contrary to the law, the law shall prevail over the circular.

16.3 - Meaning of term 'Commissioner'

The Commissioner shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers with the approval of the Board.

17. POWER OF GOVERNMENT TO EXTEND TIME LIMIT IN SPECIAL CIRCUMSTANCES - SECTION 168A

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17.1 - Power given under Section 168A

- The Government may, on the recommendations of the Council, ***extend the time limit*** specified in this Act.
- Such extension shall be given ***by notification***.
- The said extension can be given in respect of ***actions which cannot be completed*** or complied with ***due to force majeure***.
- The power to issue notification shall include the ***power to give retrospective effect*** to such notification.
- However, such retrospective effect shall ***not be*** from a ***date earlier than the date of commencement*** of this Act.

17.2 - Meaning of term 'Force Majeure'

The term 'Force majeure' means a case of –

- war,
- epidemic,
- flood,
- drought,
- fire,

- cyclone,
- earthquake or
- any other calamity caused by nature or otherwise

affecting the implementation of any of the provisions of this Act.

OMISSION AND REPEAL OF OTHER LAWS – SECTION 173 AND 174

18. AMENDMENT OF ACT 32 OF 1994 - SECTION 173

Chapter V of the Finance Act, 1994 laid down the provisions for service tax. Since service tax has been subsumed in GST, those provisions are no more required and hence are not in force.

19. REPEAL AND SAVING - SECTION 174

19.1 - Repealed acts

The below mentioned Acts shall ***stand repealed*** from the ***date of commencement of the CGST Act*** i.e. from 01.07.2017 –

- The Central Excise Act, 1944 (except in respect of goods included in Entry 84 of Union List - petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, tobacco and tobacco products)
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- The Additional Duties of Excise (Goods of Special Importance) Act, 1957
- The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978
- The Central Excise Tariff Act, 1985

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19.2 - Effect of repeal

The repeal given under section 174 or amendment given under section 173 ***shall not*** –

- have ***any new effect*** i.e. it will 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;
- However, 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, adjudication and assessment proceedings, recovery proceedings, other legal proceedings or tax, penalty etc. and any such ***proceedings that may be instituted, continued or enforced*** and tax, penalty etc. that may be levied or imposed as if these Acts had not been so amended or repealed; or

- ***affect any proceedings*** including that relating to an appeal, review or reference, instituted before, on or after the appointed day under the previous law.

19.3 - Application of General Clauses Act, 1897

The provisions of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal will apply for repeal provided under this section.

Section 6 of the General Clauses Act, 1897 is given hereunder –

Effect of repeal –

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment, then, unless a different intention appears, the repeal shall ***not*** –

- revive anything not in force or existing at the time at which the repeal takes effect; or
- affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

OTHER PROVISIONS – SECTION 146, 148, 149, 154, 155, 156, 157, 162, 163, 169 AND 171

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20. COMMON PORTAL - SECTION 146

The Government may, on the recommendations of the Council, ***notify the Common Goods and Services Tax Electronic Portal*** for facilitating –

- registration,
- payment of tax,
- furnishing of returns,
- computation and settlement of integrated tax,
- electronic way bill and
- for carrying out such other functions and
- for such purposes as may be prescribed.

CBIC has notified ***www.gst.gov.in*** as the GST common portal to carry out the above stated functions. However, the Common GST Electronic Portal for furnishing electronic way bill is ***www.ewaybillgst.gov.in***.

21. SPECIAL PROCEDURE FOR CERTAIN PROCESSES - SECTION 148

The government may, on the recommendations of the Council, ***notify certain classes of registered persons*** and the ***special procedures*** to be followed by such persons with regard to –

- registration,

- furnishing of return,
- payment of tax and
- administration of such persons.

21.1 – Notification No. 37/2023 CT for ECO u/s 148

- ***With effect from 01.10.2023***, a special procedure has been laid down under section 148 to be ***followed by ECO*** through which ***unregistered persons*** supply goods, vide Notification No. 37/2023 CT dated 04.08.2023.
- The ECOs would ensure that no inter-State supply would be made and the supply made by such unregistered person (PAN-wise) would be ***declared in their monthly GSTR 8***.
- The aggregate of total turnover made through different ECOs would be done PAN wise. In online mode, there would be a PAN based trail.
- Said notification provides that the ECO who is required to collect tax at source under section 52 has been notified as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by said unregistered persons (hereinafter referred as said person):
    i. ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;
    ii. ECO shall not allow any inter-State supply of goods through it by the said person;
    iii. ECO shall not collect tax at source under section 52(1) in respect of supply of goods made through it by the said person; and
    iv. ECO shall furnish the details of supplies of goods made through it by the said person in the statement in Form GSTR-8 electronically on the common portal.
- Where multiple ECOs are involved in a single supply of goods through ECO platform, "ECO" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.

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21.2 – Notification No. 36/2023 CT for ECO u/s 148

- ECOs would be required to declare the supplies made by such composition dealers through them through existing GSTR-8 statement.
- ECOs would also be mandated to ensure that no inter-State supply through them is allowed in respect of composition dealers by making necessary checks and validations on their system/platform.
- Notification provides that ECO who is required to collect tax at source under section 52 has been notified as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by the composition suppliers, namely: —
    i. the ECO shall not allow any inter-State supply of goods through it by the said person;
    ii. the ECO shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of section 52(3); and
    iii. the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in Form GSTR-8 electronically on the common portal.
    iv. the ECO shall not allow any inter-State supply of goods through it by the said person;

v. the ECO shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of section 52(3); and

vi. the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in Form GSTR-8 electronically on the common portal.

21.3 – Track and Trace Mechanism for Certain Goods u/s 148A

Purpose / Objective	To introduce a **Track and Trace mechanism** for specified goods to curb tax evasion and ensure end-to-end traceability across the supply chain.
Background / Rationale	Introduced to tackle large-scale evasion in high-risk goods such as tobacco and pan masala where issues like under-reporting of production, clandestine clearances and fake ITC claims are common.
Applicability	Applies only to **goods and persons / class of persons notified** by the Government.
Authority to Notify	Government, **on recommendation of the GST Council**, may notify goods and persons to whom Section 148A shall apply.
Nature of Mechanism	Government may provide a system for: 1. Affixation of **Unique Identification Marking (UIM)** 2. Electronic storage of information 3. Electronic access to such information
Unique Identification Marking (UIM)	A prescribed marking affixed on goods or packages containing specific information for tracking and verification.
Information in UIM	The nature, format and information to be embedded in UIM shall be **prescribed by rules/notifications**.
Obligations of Notified Persons	Every notified person shall: (a) Affix UIM on notified goods/packages (b) Furnish prescribed information (c) Maintain records (d) Provide details of manufacturing machinery (identification number, capacity, operational period, etc.) (e) Pay prescribed amount/charges for implementation of the system
Manufacturing Machinery Disclosure	Includes details such as machine identification, number of machines, production capacity, and duration of operation — to prevent suppression of production.
Charges / Amount Payable	Government may prescribe fees/charges for affixation and operation of the track and trace system.
Coverage of Goods	Only those goods specifically notified by Government (e.g., high-risk goods prone to evasion).
Operational Details	Not provided in the Act itself. Detailed procedures, format, compliance mechanism, etc., are to be prescribed by Rules and Notifications.
Administrative Benefit	Enables system-based monitoring, real-time tracking, prevention of fake invoicing, detection of unaccounted production and reduction of tax leakage.
Supply Chain Impact	Ensures traceability from manufacture to final sale, strengthening audit trail and enforcement capability.
Consequence of Non-Compliance	Non-compliance attracts penalty under relevant penalty provisions (e.g., Section 122B as introduced).
Nature of Provision	Preventive and monitoring provision aimed at strengthening compliance in specific high-risk sectors.

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22. GOODS AND SERVICE TAX COMPLIANCE RATING - SECTION 149

- 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.
- It can also be ***placed in the public domain*** in such manner as may be prescribed.

23. POWER TO TAKE SAMPLES - SECTION 154

The Commissioner or an officer authorised 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.

24. BURDEN OF PROOF - SECTION 155

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

25. PERSONS DEEMED TO BE PUBLIC SERVANTS - SECTION 156

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.

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26. PROTECTION OF ACTION TAKEN UNDER THIS ACT - SECTION 157

- Section 157 grants ***immunity against legal proceedings*** to the below mentioned persons –
  - President of the Appellate Tribunal
  - State President of the Appellate Tribunal
  - Members of the Appellate Tribunal
  - Officers or other employees of the Appellate Tribunal
  - Any other person authorised by the Appellate Tribunal
  - Any officer appointed or authorised under the Act
- Such immunity is provided when anything done or intended to be done ***in good faith***.
- It provides immunity from personal liability for decisions, acts, or omissions that are ***made within the scope of their official duties*** and not made in a reckless manner.

27. BAR ON JURISDICATION OF CIVIL COURTS - SECTION 162

- ***Civil court shall not have jurisdiction*** to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.
- However, the above point shall ***not apply*** in case of appeals to High Court and Supreme Court as provided under ***sections 117 and 118*** respectively.

28. LEVY OF FEE - SECTION 163

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.

29. SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES - SECTION 169

29.1 - Modes of service

Any decision, order, summons, notice or other communication shall be served by any one of the following methods –

- by ***giving or tendering it directly*** or by a messenger including a courier to the –
  - addressee, or
  - taxable person, or
  - his manager, or
  - authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person, or
  - person regularly employed by him in connection with the business, or
  - any adult member of family residing with the taxable person
- 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
- by sending a communication to his ***e-mail address*** provided at the time of registration or as amended from time to time; or
- by making it available ***on the common portal***; or
- 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
- 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.

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29.2 - Date of service

- Every decision, order, summons, notice or any communication shall be deemed to have been ***served on the date*** on which it is –
  - tendered, or
  - published, or
  - a copy thereof is affixed in the manner provided above.
- When mode of communication is ***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.

30.1 - Purpose

- The anti-profiteering measure aims at the ***benefit of the consumer***.
- It states that the ***benefit*** of any ***reduction in rate*** of tax on any supply of goods or services or the benefit of ***input tax credit*** shall be passed on to the recipient.
- Such benefit shall be passed on by way of ***commensurate reduction in prices***.

30.2 - Constitution of an authority

- The Central Government can constitute an Authority for the fulfilment of the above purpose.
- The Authority shall constitute the following members –
    - 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 of State tax or central tax for atleast 1 year or have held an equivalent post under the existing law.
- The Authority shall ***cease to exist after the expiry of 4 years*** from the date on which the ***Chairman enters upon his office*** unless the GST Council recommends otherwise.

30.3 - Duties of the authority

It shall be the duty of the authority 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,
- ***identify*** the ***taxpayer*** who has ***not passed on the benefit***,
- to ***order*** –
    - reduction in prices;
    - ***return to the recipient***, the amount equivalent to the benefit not passed on along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be,
    - if ***eligible person does not claim*** return of the amount or is not identifiable, the same shall be ***deposited in the Consumer Welfare Fund***;
    - imposition of penalty
    - cancellation of registration
- to furnish a ***performance report*** to the GST Council ***by the 10th day of the month succeeding each quarter***.

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30.4 - Application to the authority

- The applications from interested parties on issues of local nature or those forwarded by Standing Committee shall ***first be examined by the State Level Screening Committee***.

- On ***being satisfied*** that the supplier has not passed on the benefit, the Screening Committee shall ***forward the application*** with its recommendations to the ***Standing Committee on Anti-profiteering***.
- Such application shall be forwarded ***within 2 months*** from the ***date of receipt*** of a written application.
- The said period can be further ***extended up to 1 month*** for ***reasons to be recorded in writing***.
- If the Standing Committee is satisfied that there is prima facie evidence to show that the supplier has not passed on the benefit, it shall ***refer the matter to the Director General of Anti-Profiteering*** (DGAP) ***for a detailed investigation***.
- The matter shall be referred to DGAP ***within 2 months*** from the date of receipt of a written application.
- The said period can be further ***extended up to 1 month*** for ***reasons to be recorded in writing***.

30.4 - Investigation

- Before initiation of the investigation, the DGAP shall ***issue a notice*** to the ***interested parties*** and to such ***other persons as deemed fit*** for a fair enquiry into the matter.
- The DGAP shall ***conduct investigation and collect evidence*** necessary to determine undue profiteering.
- The evidence or information presented to the DGAP by one interested party can be ***made available to the other interested parties*** participating in the proceedings.
- The ***evidence provided*** will be ***kept confidential*** and the provisions of section 11 of the Right to Information Act, 2005, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.
- The DGAP can ***seek opinion of any other agency*** or statutory authorities in the discharge of his duties.
- The Authority, DGAP, or an officer authorised by him will have the following ***powers –***
    - Powers to ***summon*** any person either to give evidence or to produce a document or any other thing.
    - Powers of a civil court.
    - Every such inquiry will be ***deemed to be a judicial proceeding***.
- The DGAP shall ***complete the investigation*** within a period of ***6 months***.
- This period can be ***extended*** for a further period of ***3 months*** for reasons to be ***recorded in writing***.
- Upon completion of the investigation, the DGAP will furnish to the Authority, a ***report of its findings*** along with the relevant records.

30.6 - Order of the Authority

Where the Authority determines that a registered person has not passed on the benefit, the Authority may ***order –***

- ***reduction in prices,***

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- ***return to the recipient***, the amount equivalent to the ***benefit not passed on along with interest @ 18%*** from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be,
- if the eligible ***person does not claim*** return of the amount or is not identifiable, ***50%*** of the amount determined above clause along with ***interest @ 18%*** shall be deposited ***in the Consumer Welfare Fund of Centre*** and the ***remaining 50%*** of the amount in the ***Consumer Welfare Fund of the concerned State***,
- imposition of ***penalty*** as specified under the Act; and
- ***cancellation of registration*** under the Act

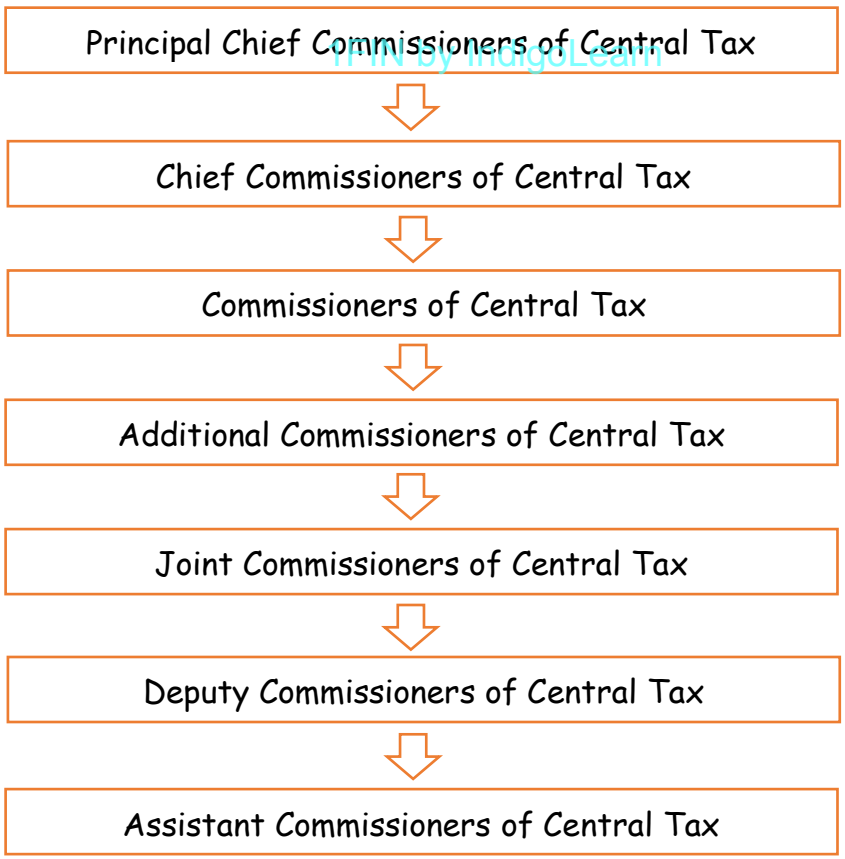
30.7 - Penalty

- Penalty is ***leviable only when*** the profiteered amount is ***not deposited within 30 days*** of the ***date of passing of the order*** by the Authority.
- The penalty in the above case shall be ***10% of such profiteered amount***.

ADMINISTRATION UNDER GST – SECTION 3, 4, 5 AND 6 OF CGST ACT AND SECTION 3 AND 4 OF IGST ACT

31. OFFICERS UNDER CGST ACT - SECTION 3 OF CGST ACT

The hierarchy under CGST Act is –



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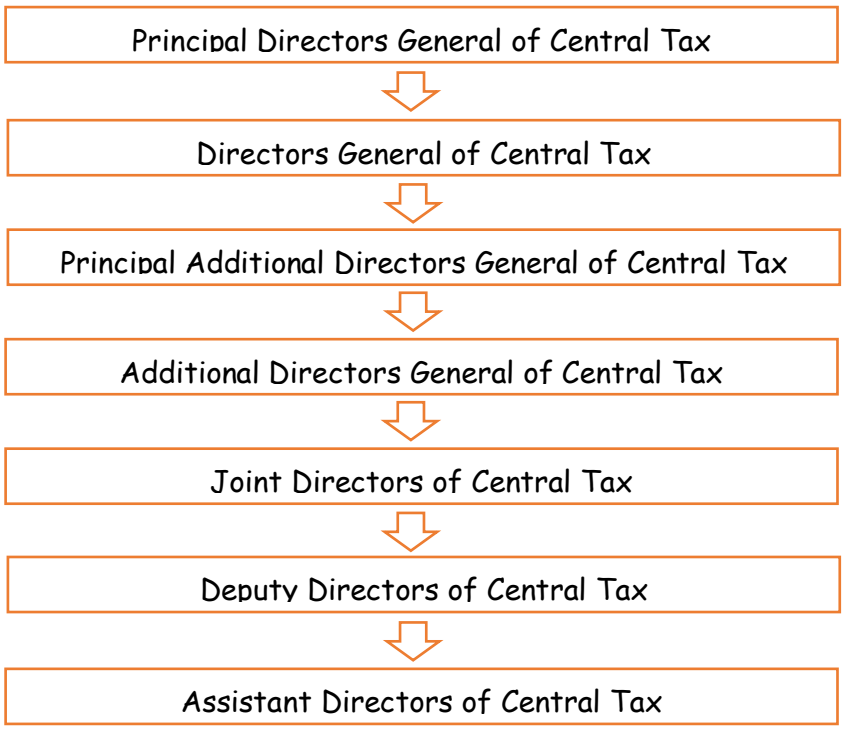
Another hierarchy under CGST Act is –



Other officers appointed under CGST Act are –

- Commissioner of Central Tax (Audit)
- Commissioner of Central Tax (Appeals)
- Additional Commissioner of Central Tax (Appeals)
- Joint Commissioner of Central Tax (Appeals)

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32. APPOINTMENT OF OFFICERS UNDER CGST ACT - SECTION 4 OF CGST ACT

- The Board may, in addition to the officers as may be notified by the Government under section 3 above, ***appoint such persons as it may think fit*** to be the officers under CGST Act.
- The Board may, by order, ***authorise*** any officer of the rank of Assitant Commissioner and above to ***appoint officers of central tax below the rank of Assistant Commissioner*** of central tax for the administration of CGST Act.

33. POWER OF OFFICERS UNDER CGST ACT - SECTION 5 OF CGST ACT

- Subject to such conditions and limitations as the Board may impose, an officer of central tax may ***exercise the powers and discharge the duties conferred or imposed*** on him under CGST Act.
- An officer of central tax may ***exercise the powers*** and discharge the duties conferred or imposed under CGST Act on any other ***officer of central tax who is subordinate to him***.
- The ***Commissioner*** may, subject to such conditions and limitations as may be specified in this behalf by him, ***delegate his powers*** to any other officer who is subordinate to him.
- Notwithstanding anything contained in this section, an ***Appellate Authority shall not exercise the powers*** and discharge the duties conferred or imposed on any other officer of central tax.

34. AUTHORISATION OF OFFICERS OF STATE OR UNION TERRITORY AS PROPER OFFICER IN CERTAIN CIRCUMSTANCES - SECTION 6 OF CGST ACT

- Without prejudice to the provisions of CGST Act, the ***officers appointed under the SGST Act or the UTGST Act*** are ***authorised to be the proper officers*** for the purposes of CGST Act.
- However, the above point shall be subject to the ***conditions specified in the notification*** by the Government on the recommendations of the Council.
- Where any ***proper officer issues an order under CGST Act***, he shall ***also issue an order under the SGST Act or the UTGST Act***, as authorised by the SGST Act or the UTGST Act, as the case may be, under intimation to the jurisdictional officer of SGST or UTGST.
- Where a proper ***officer under the SGST Act or the UTGST Act*** has ***initiated any proceedings*** on a subject matter, ***no proceedings*** shall be initiated ***by the proper officer under CGST*** Act on the same subject matter.
- Any proceedings for rectification, appeal and revision, wherever applicable, of any ***order passed by an officer appointed under CGST*** Act shall ***not lie before an officer appointed under the SGST*** Act or the UTGST Act.

35. APPOINTMENT OF OFFICERS UNDER IGST ACT - SECTION 3 OF IGST ACT

The Board may appoint such central tax officers as it thinks fit for exercising the powers under IGST Act.

36. AUTHORISATION OF OFFICERS OF STATE TAX OR UNION TERRITORY TAX AS PROPER OFFICER IN CERTAIN CIRCUMSTANCES - SECTION 4 OF IGST ACT

1FIN by IndigoLearn

Without prejudice to the provisions of IGST Act, the officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of IGST Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify

IGST ACT

37. APPLICATION OF PROVISIONS OF CGST ACT - SECTION 20 OF IGST ACT

The following provisions of CGST Act apply to IGST Act also –

- scope of supply;
- composite supply and mixed supply;
- time and value of supply;
- input tax credit;
- registration;
- tax invoice, credit and debit notes;
- accounts and records;
- returns, other than late fee;
- payment of tax;
- tax deduction at source [TDS rate under IGST - 2%];

- collection of tax at source [TCS rate under IGST - not exceeding 2%];
- assessment;
- refunds;
- audit;
- inspection, search, seizure and arrest;
- demands and recovery;
- liability to pay in certain cases;
- advance ruling;
- appeals and revision;
- presumption as to documents;
- offences and penalties;
- job work;
- electronic commerce;
- transitional provisions; and
- miscellaneous provisions including the provisions relating to the imposition of interest and penalty

Points to note –

- When the tax involved is IGST, the ***rate of TDS shall be 2%*** and the rate of ***TCS shall not exceed 2%***. Presently, the notified rate for TCS in case of IGST is 1%.
- Where the penalty is leviable under the CGST Act and the SGST/UTGST Act, the ***penalty leviable under the IGST Act*** shall be the ***sum total of the said penalties***.
- The ***words and expressions*** used and ***not defined in the IGST Act*** but defined in the CGST Act shall ***have the same meaning as assigned to them in the CGST Act***.
- Similarly, the words and expressions used and ***not defined in the CGST Act*** but defined in the IGST Act shall ***have the same meaning as assigned to them in the IGST Act***.

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38. APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS - SECTION 17 OF IGST ACT

38.1 - Apportionment of IGST when ITC is not claimed

When the ITC is not claimed, the IGST shall be apportioned in the following manner –

- 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 shall be apportioned in the following manner –
    - When supply took place in a ***state - to that respective state***;
    - When supply took place in a ***Union Territory - to the Central Government***.
    - When ***place of supply cannot be determined*** - 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*** - 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 interest, penalty and compounding amount realised in connection with the IGST shall also be apportioned in the similar manner.

32.2 - Apportionment of IGST in B2B supplies where ITC is claimed

The amount shall be apportioned at the rate of ***50% to the Central Government*** and ***50% to the State Governments / Union territories*** on ad hoc basis.

32.3 - Cases when ITC cannot be claimed

Cases of supply where ITC cannot be claimed –

- 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.

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SPECIAL PROCEDURE FOR CORPORATE DEBTORS UNDERGOING THE CORPORATE INSOLVENCY RESOLUTION PROCESS

General provision

- As per Insolvency Bankruptcy Code (IBC), 2016, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered.
- The management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (IRP) or resolution professional (RP).
- The IRP/RP continues to run the business and operations of the said entity as a going concern and is responsible for compliance with all the laws till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (NCLT).

The Government has prescribed ***special procedure under section 148 of the CGST Act*** for the above case.

Notification No. 11/2020 CT dated 21.03.2020 as amended issued under section 148 read with ***Circular No. 138/08/2020 GST*** provides as under –

- The ***corporate debtor*** who is undergoing CIRP is to be ***treated as a distinct person*** of the corporate debtor.
- It shall be ***liable to take a new registration*** in each State or Union territory where the corporate debtor was registered earlier.
- Such registration shall be taken ***within 30 days*** of the ***appointment of the IRP/RP***.
- However, corporate debtors who have ***not defaulted in furnishing statements (GSTR-1) and returns*** under GST would ***not be required to obtain a separate registration*** with effect from the date of appointment of IRP/RP.
- The ***new registration*** by IRP/RP shall be ***required only once***.
- In case of any ***change in IRP/RP*** after initial appointment under IBC, it would be ***deemed to be change of authorized signatory*** and it would not be considered as a distinct person on every such change after initial appointment.
- The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period.

MANNER OF DETERMINATION OF COMMENCEMENT AND TERMINATION OF TIME [SECTION 9 OF THE GENERAL CLAUSES ACT, 1897]

Section 9 of General Clauses Act, 1897 provides the guidelines in ***computation of time during the period of limitation***.

As per the provisions, the important point to note here is –

- While computing the rule, the ***first day shall be excluded*** and the ***last day shall be included***.

  Example – If a notice is to be issued within 30 days of an act. Such act was conducted on 1st June. In such case, the due date will be 1st July. Here, we have excluded the first day i.e., 1st June while counting and included the last day i.e., 1st July.

- The expression '***month***' shall mean ***a calendar month*** and ***not 30 days***.

  Example – If a notice is to be issued within 1 month from 1st October, then the said notice shall be issued till 1st November. There is no need to count 30 days in such case.

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Disclaimer

This book is designed for students pursuing CA Final course, who are appearing for the **Indirect Taxation** exam in **May-26 or afterwards**. The content in the book is not in the order provided by ICAI to ensure logical and comprehensive learning.

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CUSTOMS

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1. LEVY AND EXEMPTIONS OF CUSTOMS

1. INTRODUCTION

Contents

- Understand the basic concepts of customs law.
- Understand the definition of important terms.
- Determining factors to levy customs duty.
- Points and circumstances for levy of customs duty.
- Assessment of duty.
- Remission, abatements and exemptions under customs law

- Customs is a form of indirect tax. Customs is defined as duties imposed on imported goods/ less commonly exported goods.
- ***The Customs Act*** was passed and promulgated in India by the Parliament in the year ***1962*** which replaced the erstwhile Sea Customs Act, 1878. Further, the ***Customs Tariff Act was passed in the year 1975*** to replace the Indian Tariff Act, 1934. The Customs Tariff Act was ***amended in the year 1985***.
- The Customs Act, as it stands now, consolidates the entire law on the subject of import and export duties, which were earlier contained in various enactments like the Sea Customs Act, 1878, Inland Bonded Warehouses Act, 1896 and the Land Customs Act, 1924.

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1.1 - Constitutional Provision

The power to levy customs duties on import/export, as well as the power to legislate the principles to determine whether a transaction qualifies as import/export, lies solely with the Union, i.e., the Parliament of India [as per Article 286].

1.2 - Overview of the Customs Law

- ***The Customs Act, 1962 extends to the whole of India*** and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.
- The entire Act has ***161 Sections*** in total divided into ***Seventeen chapters***.

2. IMPORTANT DEFINITIONS

2.1 - Beneficial Owner - Section 2(3A)

Any person –

a. on whose behalf the goods are being imported or exported, or
b. ***who exercises effective control*** over the goods being imported or exported

2.2 - Customs area - Section 2(11)

The ***area of a customs station or a warehouse*** and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

2.3 - Customs Station - Section 2(13)

Any customs port, customs airport, international courier terminal, foreign post office, or land customs station.

2.4 - Export - Section 2(18)

Export with its grammatical variations and cognate expressions, means ***taking out of India to a place outside India.***

2.5 - Import - Section 2(23)

Import with its grammatical variations and cognate expressions means ***bringing into India from a place outside India.***

2.6 - India - Section 2(27)

India includes the territorial waters of India.

The territorial waters of India extend to 12 nautical miles into sea from the appropriate base line. Thus, goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e., if the vessel enters the territorial waters of India.

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India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

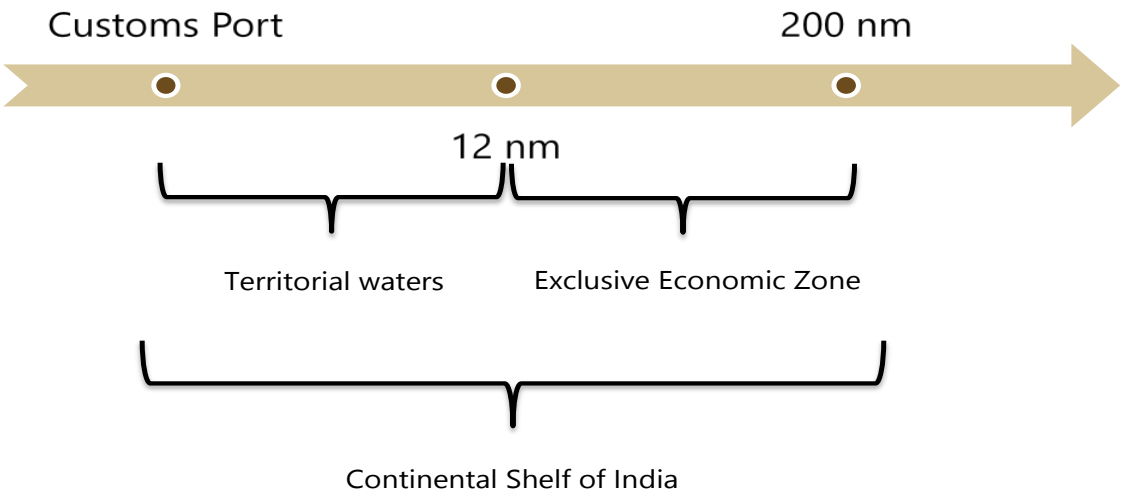
2.7 - Indian customs waters - Section 2(28)

The waters extending into the sea up to the limit of Exclusive Economic Zone and includes any bay, gulf, harbour, creek or tidal river.

Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well.

Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. Therefore, Indian customs waters extend to a total of 200 nm from base line.

- *If a person has committed any offence punishable under customs law within the Indian customs waters, he may be arrested.*
- *Also, goods may be confiscated, and vessel be stopped in the Indian customs waters if the same is found to be used in the smuggling.*
- *Further, prohibited goods can also be confiscated if brought within the Indian customs waters.*



3. DETERMINING FACTORS FOR IMPOSITION OF TAXES AND DUTIES

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3.1 - Stages of imposition of taxes and duties

All taxes and duties are imposed in three stages –

1. ***Levy*** – declaration of liability is made and persons or properties in respect of which the tax or duty is to be levied is identified and charged.
2. ***Assessment*** - procedure of quantifying the amount of liability, and
3. Collection of tax or duty

3.2 - Factors upon which liability towards customs duty is based

- The goods, the point and the circumstances under which the customs duty becomes leviable
- The procedure, the mechanism and the organisation for determining the amount of customs duty and collection thereof
- The exemption to the levy

4. POINT AND CIRCUMSTANCES OF LEVY

Charging Section [Section 12]

- Section 12 is the charging section of the Act.
- The taxable event is import or export of goods.
- However, it may be noted that this ***levy is subject to other sections*** in the Act.
- There is ***no general exemption to the goods imported by the Government***. However, imports by ***Indian Navy***, specific equipment required by ***police***, ***Ministry of Defence***, ***Costal Guard*** etc. are fully exempt from customs duty by virtue of specific notifications (subject to fulfilment of conditions and/or procedure set out in the notification).
- The duty shall be charged at such rates as may be specified under the Customs Tariff Act, 1975.
- The ***charge*** of customs duty is considered to be ***on the goods*** and ***not on the person*** importing them or paying the duty.

4.1.1 - Taxable event

Importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs.

The **main test** for determining the taxable event is the **happening of the event** on which the charge is affixed.

Imports	***Exports***
a) In case of goods cleared for home consumption – Import of goods will commence when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country. The taxable event is reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed. *[Garden Silk Mills (SC)].* ***b) In case of goods cleared for warehousing –*** The custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country. *[Kiran Spinning Mills (SC)].*	Export of goods is complete when the goods cross the territorial waters of India.

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4.2 - Distinction between clearance for home consumption and Clearance for warehousing

Goods cleared for home consumption

- Customs duty on import of the goods has been discharged.
- The goods are therefore cleared for utilization or consumption.

Goods cleared for warehousing

- Goods are deposited in a warehouse and cleared at a later time.
- The collection of customs duty is deferred till such goods are cleared for home consumption.
- The importer executes a bond binding himself in a sum equal to thrice the amount of duty assessed.
- Importer also pays interest, rent and charges for storage of goods in the warehouse.

4.3 - Duty liability in certain special circumstances

4.3.1 - Re-importation of goods [Section 20]

- Goods imported into India after exportation therefrom.
- Such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.
- Exceptions in this regard–
  - *i) Concessional duty payable in case of re-importation of goods exported under duty drawback, exported for repairs, etc. [Notification No. 45/2017 Cus. dated 30.06.2017] –*

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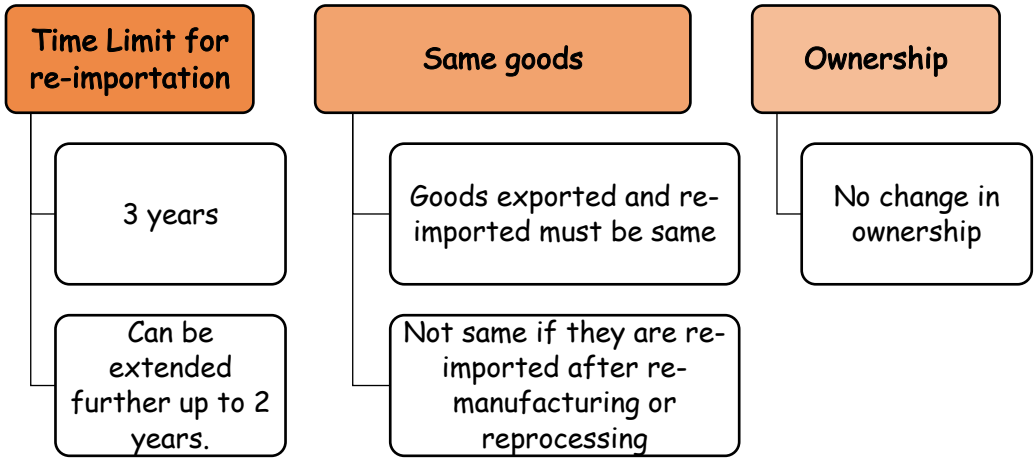
Description of goods exported	*Amount of import duty payable if re-imported*
A. Goods exported- i. under claim for duty drawback, ii. under claim for refund of integrated tax paid on export goods, iii. under bond without payment of integrated tax iv. under duty exemption scheme or Export Promotion Capital Goods Scheme (EPCG)	Amount of incentive availed of at the time of export. In case of point (iv) amount of IGST and compensation cess leviable at the time and place of importation of goods subject to specified conditions.
B. Goods other than those falling under above category exported for repairs abroad	Customs duty* on the value of re-imported goods. Value of Re-imported goods = Fair cost of repairs + cost of materials used in repairs + insurance and freight (both ways). *Customs duty = Basic Customs Duty + IGST + GST Compensation cess
C. Goods other than A & B above	NIL

- Conditions to be satisfied for claiming these exemptions –



- Cases where exemptions/concessions are not applicable –
  a. re-imported goods had been exported by 100% Export Oriented Undertaking (EOU) or a unit in Free Trade Zone (FTZ),
  b. re-imported goods had been exported from a public/private warehouse,
  c. re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944 (***tobacco products and petroleum products***).

*In case of **goods taken out of India for exhibition or on consignment basis for export promotion** (except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017), re import of such goods after return from such exhibition or from such consignees will be covered under residual entry of the Notification No. 45/2017 dated 30.06.2017, **provided re-import happens before 6 months from the date of delivery challan.***

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ii) Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process –

Particulars	*Time-limit for re-importation*	*Other conditions*
A. Goods manufactured in India and re-imported for repairs or for reconditioning other than the specified goods	3 years [10 years in case of export to Nepal]	i) Goods must be re-exported within 6 months (extendable till 1 year). ii) The AC/DC is satisfied as regards identity of the goods. iii) The importer at the time of importation executes a bond.
B. Goods manufactured in India and re-imported for *a.* Reprocessing *b.* Refining *c.* Re-making d. Any similar process as (a) to (b) above	1 year	

The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.

4.3.2 - Goods derelict, wreck etc. - Section 21

All goods, **derelict, jetsam, flotsam and wreck** brought or coming into India, shall be **dealt with as if they were imported into India**, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

Derelict	Any cargo, vessel, etc. abandoned in the sea with no hope of recovery.
Jetsam	Goods jettisoned (i.e., dropped or thrown) from the vessel to save her from sinking.
Flotsam	Jettisoned goods which continue floating in the sea.
Wreck	Cargo or vessel or any property which are cast ashore by tides after ship wreck.

4.4 - Customs (Import of Goods at Concessional Rate of Duty or for specified End use) Rules, 2022

These rules shall apply where (a) a notification provides for the observance of these rules; (b) an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use [Rule 2].

4.4.1 - Definition - Rule 3

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• Capital goods	→ Goods, the value of which is ***capitalised in the books of account*** of the importer.
• Exemption notification	→ A notification issued under ***section 25(1)*** and Section 11 of the Customs Act, 1962.
• Information	→ The ***information provided by the manufacturer*** who intends to avail the benefit of an exemption notification.
• Job work	→ Any ***treatment, process or manufacture***, consistent with the exemption notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones; and the term "***job worker***" shall be construed accordingly.
• Jurisdictional Custom Officer	→ An officer of Customs of a ***rank equivalent to the rank of Superintendent or an Appraiser*** exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services, the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases.
• Manufacture	→ The ***processing of raw materials or inputs*** by the importer in any manner ***that results in emergence of a new product*** having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly.
• Output service	→ Supply of service excluding after-sales service, utilizing imported goods.

• Specified End use	→ Specified end use means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term "end use recipient" shall be construed accordingly.
• Quarter	→ means a period comprising any three consecutive calendar months ending on the last day of March, June, September or December of a calendar year.

4.4.2 - Importer to give one time prior information - Rule 4

1. The importer shall provide on time prior information on the common portal in the prescribed form containing following particulars.
   i. The name and address of the importer and his job worker, if any,
   ii. The ***goods produced or process undertaken*** at the manufacturing facility of the importer and/or his job worker, if any, or both,
   iii. The ***nature and description of imported goods used*** in the manufacture of goods at the premises of the importer or the job worker, if any,
   iv. particulars of the notification applicable on such import,
   v. Nature of output service rendered utilising imported goods,
   vi. particulars of premises intended to be used in case of unit transfer,
   vii. details of the end use recipient in cases where goods imported are supplied for specified end use; and
   viii. the intended ports of import

   On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information. However, such information may be updated on the common portal in case of a change in the details furnished in prescribed form.

   The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises

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4.4.3 - Procedure to be followed - Rule 5

1. The importer who intends to avail the benefit of a notification shall be required to mention the IIN (referred to in sub-rule (2) of Rule 4) and continuity bond number and details while filing the Bill of Entry.
2. The Deputy Commissioner/Assistant Commissioner of Customs at the custom station of importation shall allow the benefit of the notification to the importer.
3. Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

4.4.4 - Importer to maintain records. - Rule 6

- The importer shall maintain an account so as to clearly indicate:
  - Quantity and value of goods imported,
  - Quantity and date of receipt of goods imported in the relevant premises

- quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;
- quantity of goods sent for job work and the nature of job work carried out;
- quantity of goods received after job work;
- quantity of goods re-exported, if any, under rule 10; and vii. quantity remaining in stock, according to bills of entry,

- Importer must produce the account as and when required by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction
- The importer shall submit a quarterly statement on the common portal in the prescribed form by 10th day of the following quarter;
- However, the importer may submit details of goods consumed in the prescribed form at any point of time, for immediate recredit of the bond which shall become a part of the quarterly statement of the subsequent quarter

4.4.5 - Procedure for allowing imported goods for job work. - Rule 7

1. The importer shall maintain a record of the goods sent for job work during the month and mention the same in the quarterly statement referred to in sub-rule (2) of rule 6
2. The importer shall ***send the goods to the premises of the job worker*** under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
3. The maximum period for which the goods can be sent to the job worker – 1 year from the date of invoice or ewaybill.
4. In case the importer is unable to establish that the goods sent for job work have been used as per the particulars of job work, the Jurisdictional Customs Officer shall take necessary action against the importer
5. The job worker shall –
   i. Maintain an account of
      a. receipt of goods,
      b. manufacturing process undertaken thereon, and
      c. the waste generated, if any, during such process,
   ii. Produce the account details before the Jurisdictional Customs Officer as and when required by the said officer,
   iii. ***After completion of the job work*** send the processed goods to the importer or to another job worker as directed by the Importer for carrying out the remaining processes, if any, under the cover of an invoice or ewaybill.

4.4.6 – Procedure for allowing imported goods for unit transfer – Rule 8

(1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the quarterly statement referred to in sub-rule (2) of rule 6.

(2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) The importer shall in relation to transfer of goods to another unit,-

- maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
- after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

4.4.7 – Procedure for supplying imported goods to the end use recipient – Rule 9

(1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the quarterly statement referred to in sub-rule (2) of rule 6.

(2) The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the CGST, 2017, mentioning the description and quantity of the goods.

(3) In case of supply for replenishment or export against supply, the end use recipient shall,-

maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;

produce the account details before the jurisdictional Customs Officer as and when required by the said officer;

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produce the relevant details to the importer for fulfilment of the benefit under the notification.

4.4.8 - Re-export or clearance of unutilised or defective goods - Rule 10

1. Re-export or clearance

Within 6 months from the date of import, with the **permission of the jurisdictional Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises,** the importer shall have an option to re export or clear the goods for home consumption.

Said period of 1 year can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

2. Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the quarterly statement by providing the details of necessary export documents. However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

3. Clearance of imported capital goods after having been used for the specified purpose –

On payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, **along with interest**, at

the rate fixed by the notification issued under section 28AA of the Act, **on the depreciated value allowed in straight line method**, as specified below, namely: —

i.	for every quarter in the first year	@ 4%,
ii.	for every quarter in the second year	@ 3%,
iii.	for every quarter in the third year	@ 3%,
iv.	for every quarter in the fourth & fifth-year types	@ 2.5%, and
v.	thereafter for every quarter	@ 2%.

4.4.9 - Recovery of duty in certain case - Rule 11

In the event of any failure on the part of the importer to comply with the conditions mentioned in sub-rule (1) of rule 10 or where the payment referred in sub-rules (3) and (4) of rule 10 is not paid or short paid, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings

The importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the exemption notification. In the event of failure to do so, the Jurisdictional AC/DC shall take action under these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

4.4.10 – Penalty - Rule 12

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The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a specified penalty without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

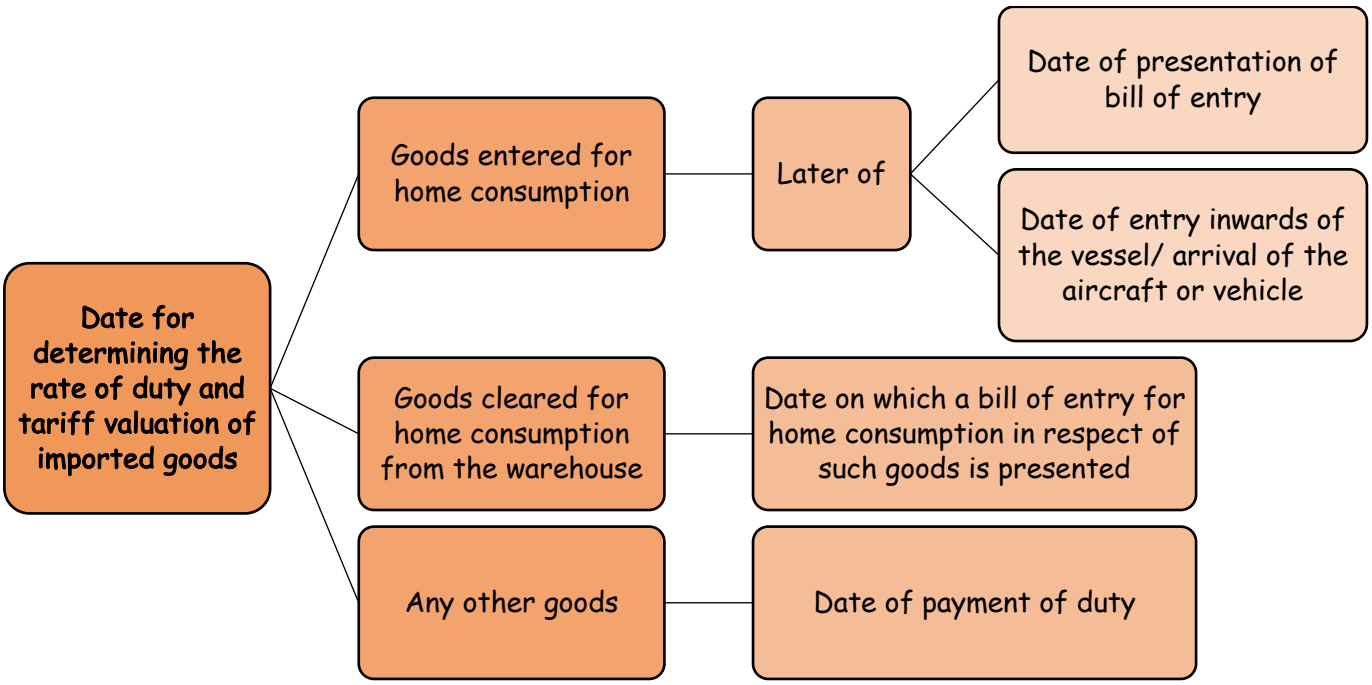
5. PROCEDURE, MECHANISM AND ORGANISATION FOR ASSESSMENT OF DUTY

5.1 - Assessment

In the context of the customs duty, the term assessment means **quantification of the amount of duty payable.** The process of assessment involves the following stages –

- Determination of the quantity and total value of the consignment.
- Determination of the proper tariff classification of the goods.
- ***Determination of the appropriate rate of duty*** after considering the various exemptions, abatements, remissions.
- Determining whether the goods are to be cleared for home consumption or to be deposited in the warehouse.

5.2 - Date for determining the Rate of Duty and Tariff Valuation of Imported goods - Section 15



In respect of **baggage and goods imported by post**, the provisions of section 15 will not be applicable as they are independently covered by other sections.

Case Law: Bharat Surfacants Pvt. Ltd. v. UOI (SC)

Facts*: In this case, a ship entered Bombay and made prior entry on 04.07.1981 at which time the duty was 12.5%. Since there was no space, the ship proceeded to Karachi and after that came back to Bombay on 23.07.1981 and was granted final entry on 04.08.1981 when the duty rate had been revised to 15%.*

Judgement*: The Supreme Court held that the rate applicable would be 15% only since the formality of entry inward could be done only on 04.08.1981.*

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Case Law: Rajkumar Knitting Mills P. Ltd. vs CC (SC)

Judgement: Date of contract is not relevant and only the date of importation is relevant.

6. REMISSION, ABATEMENT AND EXEMPTIONS

6.1 - No duty on pilfered goods - Section 13

- If any imported goods are ***pilfered after the unloading thereof and before the proper officer has made an order for clearance*** for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods.
- The term '***pilfer***' means "to steal, especially in small quantities; ***petty theft***".
- However, where such goods are restored to the importer after pilferage, the importer becomes liable to the duty.

Conditions to be satisfied for exemption from duty u/s 13

- Imported goods should have been pilfered
- Pilferage should have occured after the goods are unloaded but before the PO makes the order for clearance
- Pilfered goods should not have been restored back to the importer

- In order to claim pilferage, the following circumstances should exist –
  - There should be evidence of tampering with the packages,
  - There should be ***blank space for the missing articles*** in the package, and
  - The missing articles should be ***unit articles*** [and not part articles].
- Pilferage noticed at the time of removal of goods by the importer –
  - In such a case, ***the order for clearance***, or as the case may be, for bonding ***would already have been passed***. Therefore, the ***importer has to ask for survey*** either by the steamer agents or by the insurance surveyors and the ***report issued by them would form the basis for claiming remission***. As in such the circumstances, the duty would already have been paid, ***the remission is allowed in the form of a refund.***
  - If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable.

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Section 13 deals only with pilferage and **does not deal with loss/destrcution of goods.**

Section 13 would **not apply if it is shown that pilferage took place prior to the unloading** of goods.

In case of pilferage, only section 13 applies and **claim of refund u/s 23(1) is not permissible.**

Section 13 also **applies to the goods which are under the custody of the custodian u/s 45.** Whether duty is paid by the custodian or not, remission cannot be denied to the importer the Department.

6.2 - Remission of duty on goods lost, destroyed or abandoned - Section 23

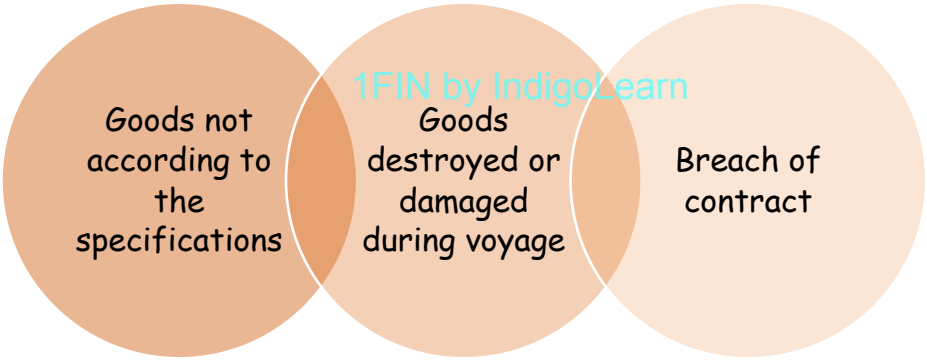
6.2.1 - Remission of duty

- The provision u/s 23 is not those goods will not be liable to duty, but duty paid on such goods shall be remitted by the AC/DC of Customs.
- Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been ***lost (otherwise than as a result of pilferage) or destroyed***, at any time ***before clearance for home consumption***, the ***Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods***. [Sub-section (1)].

- Thus, section 23 shows that it comes into play after the duty has been paid and even after an order for home consumption has been passed, but before the goods are actually cleared, and then it is found that they have been lost/destroyed.
- The loss referred to in this section is generally due to ***natural causes*** like fire, flood, etc, and may be at the warehouse also.
- ***The loss/ destruction have to be proved to the satisfaction of the Assistant Commissioner or Deputy Commissioner***. Thereupon, he may pass remission orders cancelling the payment of duty. In case duty has already been paid, refund can be obtained after getting the remission orders.

6.2.2 - Right to relinquish the title to the goods – abandonment of goods

- "Relinquish" means to give over the possession or control of, to leave off.
- The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon. [Sub-section (2)].
- ***Exception*** – The owner of any such imported goods shall not be allowed to relinquish his title to such ***goods regarding which an offence appears to have been committed*** under this Act or any other law for the time being in force.
- Reasons for abandonment of goods by importers –



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- Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Principal Commissioner/Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.

Distinction between Section 13 and Section 23		
Basis	***Pilferage of goods u/s 13***	***Loss or destruction of goods u/s 23***
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft.	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of goods is possible where the importer is unwilling/unable to take the delivery of the imported goods.

Duty on goods	The importer shall not be liable to pay the duty leviable on such goods.	The duty paid on such goods shall be remitted to the importer.
Subsequent restoration of goods	The importer become liable to duty.	Restoration is not possible.
Warehoused goods	Provisions of section 13 are not applicable to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/destruction or loss of goods	Does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss/destruction to the satisfaction of the AC/DC of Customs.
Time of occurrence	After the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.	Any time before clearance for home consumption under section 47

6.3 - Abatement of duty on damaged or deteriorated goods - Section 22

- "Damage" denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.
- "Deterioration" means reduction in quality of goods due to natural causes.

6.3.1 - Cases where the abatement is available

Note: The accident should not be due to any wilful act, negligence or default of the importer, his employee or agent.

6.3.2 - Amount of duty chargeable after abatement

$$= Duty\ on\ goods\ before\ damage\ or\ destruction \times \frac{Value\ of\ damaged\ or\ deteriorated\ goods}{Value\ of\ goods\ before\ damage\ or\ deterioration}$$

6.3.3 - Valuation of the damaged or deteriorated goods

The value shall be –

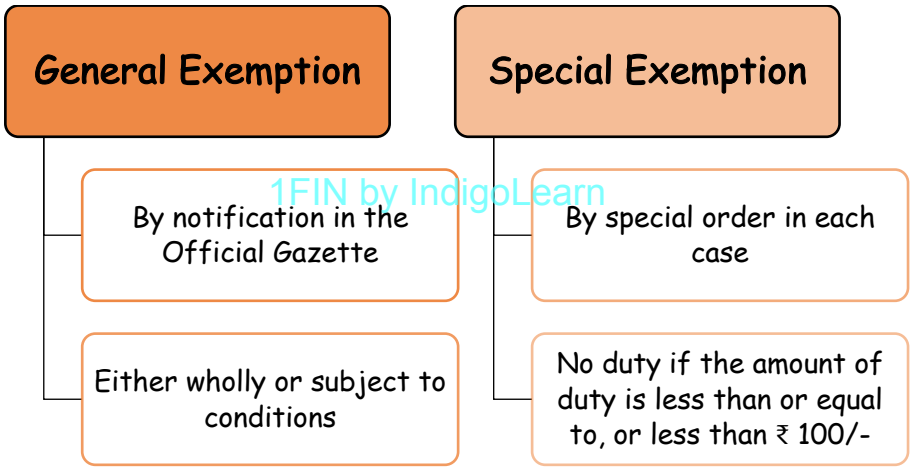
a. Ascertained by the proper officer, or
b. The proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

6.4 - Denaturing or Mutilation of Goods - Section 24

- If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, then denaturing or mutilation of such goods is useful.
- By ***denaturing, goods are made unfit for other purposes***. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.

6.5 - Exemption from Customs Duty - Section 25

The **power to grant exemption** from payment of customs duty is given to **Central Government.** The power of the Central Government to alter the duty rate structure is known as delegated legislation. This power is always **subject to superintendence and check by Parliament.**



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Both the above-mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable.

However limited period of validity shall not apply to any such exemption granted to, or in relation to, —

a) any multilateral or bilateral trade agreement;
b) obligations under ***international agreements***, ***treaties***, ***conventions*** or such other obligations including with respect to United Nations
c) ***agencies***, ***diplomats*** and international organisations;
d) privileges of constitutional authorities;
e) schemes under the Foreign Trade Policy;
f) the ***Central Government schemes*** having validity of more than two years;
g) re-imports, temporary imports, goods imported as gifts or personal baggage;

h) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

6.5.1 - Rationale for Grant of Exemption

a. ***Moral grounds***, where the duty should not be levied at all. Some of the instances, which may be given, are –
   i. Where the goods do not reach the Indian soil at all.
   ii. Where the goods have reached the Indian soil but are not available for consumption.
   iii. Where the goods get damaged or deteriorated in transit.
b. ***Discretionary provision***, where the exemption is used for controlling the economy and industrial growth of the country.

6.5.2 - Effective date

- The date of effect of the notification will be the date of its issue for publication in the Official Gazette.
- Where the ***exemption is through a special order***, the above rules do not apply. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government. The ***beneficiary can claim refund for the period reckoned from the date of its issue.***
- ***Clarifications*** to the notifications ***may be issued within one year*** from the issue of the notification and such clarifications ***will have retrospective effect***.

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6.6 - Exemption from customs duty on imported goods used for inward processing of goods - Section 25A

- Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the ***goods which are imported for the purposes of repair, further processing or manufacture,*** as may be specified therein, from the whole or any part of duty of customs leviable thereon.

Conditions for exemption u/s 25A

- The goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within 1 year from the date on which the order for clearance of the imported goods is made
- The imported goods are identifiable in the export goods
- Other conditions as may be specified in that notification

6.7 - Exemption from customs duty on re-imported goods used for outward processing - Section 25B

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon.

Conditions for exemption u/s 25B

- The goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within 1 year from the date on which the order for clearance for export is made
- The exported goods are identifiable in the re-imported goods
- Other conditions as may be specified in that notification

7. SIGNIFICANT SELECT CASES

7.1 - Mangalore Refinery & Petrochemicals Ltd v. Cus. 2015 (323) ELT 433 (SC)

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Facts **–** The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

Issue **–** Whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?

Judgement **–** The quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

7.2 - Tirupati Udyog Ltd. v. UOI 2011 (272) ELT 209 (AP)[maintained by SC]

Issue – Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?

Judgement – : The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 –

i. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

ii. SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations.

iii. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, section 12(1) of the Customs Act 1962 (the charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

7.3 - Other select cases laws on scope of exemption notifications

Case	*Judgement*
1. U.O.I. v. Paliwal Electricals P. Ltd (SC)	• Exemption notification represents the policy of the government. • It evolved to sub-serve public interest and revenue.
2. Shrijee Sales Corporation v. U.O.I. (SC)	Time bound notification can be withdrawn.
3. U.O.I. v. Jalyan Udyog 1993 (SC)	Exemption notification is a class of delegated or conditional legislation. Power can be used to – • raise revenue • regulate the economy and • serve social objectives.
4. Murthy Match Works v. AC (SC)	Classification between small and big manufacturers not discriminatory.
5. ITC Bhadrachalam Paper Boards Ltd. v. CCE (SC)	Choice of date in exemption notifications cannot be questioned as it a question of policy.
6. Ramdhan Pandey v. State of UP (SC)	Exemption notification not valid if it does not recite public interest.
7. MJ Exports v. CCE (approved by SC)	Public interest means an act beneficial to general public.
8. Hero Cycles Ltd. v Union of India (Bom.) [maintained by SC]	In case of omission to claim exemption does not result in denial of benefit.
9. Boc India Ltd. v State of Jharkhand (SC)	For claiming exemption, assessee must bring on record sufficient materials/ evidence/ documents to prove his eligibility.

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7.4 - Case laws on interpretation of notification

Case	*Judgement*
1. CCE v. Parle Exports P. Ltd. (SC)	• Notification to be treated as a part of the enactment itself. • Interpretation given at the time of enactment or issue to be given weight.
2. HMM Ltd. v. CCE (SC)	Exemption notification should be construed strictly and reasonably having regard to the language employed.
3. Swadeshi Polytex Ltd. v. CCE (SC)	Strictness of construction does not mean that circuitous (i.e., indirect) process should be followed. Strictness should also result in giving full effect.
4. GSFC Ltd. v. CCE (SC)	Express language to be given effect. Supposed intention to be gathered from language used.

5. CC v. United Electrical Industries Ltd. (SC)	• Exemption notification not to be rendered nugatory or purposeless. • The word singular includes plural.
6. Novopan India Ltd. v. CCE (SC)	Exemption notification construable strictly.
7. SG Glass Works P. Ltd. v. CCE (SC)	Exemption notification need not be construed strictly when there is no doubt or ambiguity in it.
8. Rajasthan Spg. & Wvg. Mills Ltd. v. CCE (SC)	Liberal construction which enlarges the term and scope of notification not permissible.
9. CCE v. Shibani Engineering Systems (SC)	Exemption notification to be read as an ordinary man would read it.
10. Prestige Engg. India Ltd. v. CCE (SC)	Expressions used in the Act should be understood in the same sense if used in Rules and notifications.
11. BK Industries v. U.O.I. (SC) 12. Doypack Systems P. Ltd. v. U.O.I (SC)	• Exemption cannot be claimed on the strength of Finance Ministers Budget speech. • Notings on Government files cannot be used as an aid in construction.
13. Bombay Chemicals P. Ltd. v. CCE (SC)	• Exemption notification to be interpreted differently from statute. • Strict interpretation applicable to find out whether a subject falls under the exemption. Once this is solved, liberal interpretation to be given by reading the notification as a whole.
14. MCF Ltd v. Dy. Commissioner (SC) 15. Thermax P. Ltd. v. CCE (SC) 16. Formica India Division v. CCE (SC) 17. Indian Aluminium company Ltd. v. Thane Municipal Corporation 1991 (SC)	• Conditions given in the exemption must be satisfied to give exemption. • If not, then the exemption granted will result in fraud or administrative inconvenience.
18. Mysore Metal Industries v. CCE (SC) 19. Motiram tolaram v. U.O.I. (SC)	Burden to prove eligibility to exemption notification on the claimant.
20. Prince Khadi Woollen Handloom Prod. Coop. Indl. Society v. CCE (SC)	Exemption cannot be denied on a ground not originally contended.
21. CCE v. Indian Petro Chemicals (SC)	Assessee can opt for that notification which is more beneficial.
22. CC v. Perfect Machine Tools Co. P. Ltd (SC)	A particular item not expressly excluded does not mean that it is included.
23. Faridabad CT Scan Centre v. DG Health Services (SC)	Benefit not to be extended on the ground that such benefit is wrongly extended to others.
24. Johnson & Johnson Ltd. v. CCE (SC)	In interpreting an earlier notification, narrow or broader view to be taken can be decided based on subsequent notification.
25. Kuil Fireworks Industries v. CCE (SC)	Assessee cannot suffer on account of illegal act of Department.

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26. CC v. Lekhraj Jessumal & Sons (SC)	Words in Tariff Schedule to be interpreted keeping in mind the rapid march of technology as industry is not static.

ILLUSTRATIONS – Unit 1

Illustration 1

What will be the impact on the customs duty in the following circumstances-?

1) Goods are damaged inside the warehouse before clearance for home consumption Goods are deteriorated inside the warehouse before clearance for home consumption
2) Goods are destroyed in the warehouse before clearance for home consumption
3) Goods are destroyed on the wharf, before clearance for home consumption Goods are destroyed after clearance from warehouse

Illustration 2

A machine was originally imported from Japan at Rs. 250 lakh in July 20XX on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December 20XX and re-imported without any re-manufacturing or re-processing in October next year after repairs.

Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material Rs.6 lakh) would have been Rs.9 lakh. Actual insurance and freight charges (to and fro) were Rs.3 lakh. The rate of basic customs duty is 10% and rate of IGST in India on like article is 12%.

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Ignore GST compensation Cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Note: the importer intends to avail exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad.

Illustration 3

A machine was originally imported from Japan at Rs.250 lakh in July on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December and re-imported without any re-manufacturing or re- processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material

Rs.6 lakh) would have been Rs.9 lakh. Actual insurance and freight charges (to and from) were Rs.3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess & Agriculture infrastructure and development cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Note: The importer intends to avail exemption, if any, with regard to re- importation of goods which had been exported for repairs abroad.

Illustration 4

What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act,1962?

Illustration 5

ASC Ltd. Entered in to technical collaboration with MSC Ltd. Of Netherlands and imported drawings and designs in paper form through professional courier and post parcels.

ASC Ltd. Declared the value of these drawings and designs at a very nominal value

However the Assistant Commissioner of Customs valued these drawings and designs at intrinsic value and levied duty on them.

ASC Ltd. Contended that customs duty can not be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act,1962.

Do you feel the stand taken by the ASC Ltd. Is tenable in law? Support your answer with a decided case law, if any.

Illustration 6

M/s Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an "essentiality certificate" granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. Though the importer applied for the certificate within the statutory time limit prescribed for the same, the certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importer's claim for exemption.

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Examine briefly whether the department's action is sustainable in law.

Illustration 7

Lucrative Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture.

The said goods were warehoused from the date of its import.

Lucrative Laminates sought an extension of the warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse.

Subsequently, Lucrative Laminates applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non- availability of orders for clearance.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by the Lucrative Laminates is valid in law?

Illustration 8

M/s. XYZ, a 100% export-oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area.

Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods.
Do you think the demand of the Customs Department is valid in law.

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2. TYPES OF DUTIES

Contents

- Understand the various duties/taxes leviable under the Customs law.
- Understand Basic Customs Duty, IGST, Compensation Cess, SWS and AIDC and their calculation.
- Additional Duties of Customs
- Concept of protective duties, safeguard duty, countervailing duties on subsidised goods and anti-dumping duty.
- Emergency power of CG to impose or enhance Export and Import duties.
- Appeal to CESTAT.

1. BASIC CUSTOMS DUTY (BCD) [SECTION 12 OF THE CUSTOMS ACT & SECTION 2 OF THE CUSTOMS TARIFF ACT (CTA)]

1.1 - Charging Section - Section 12

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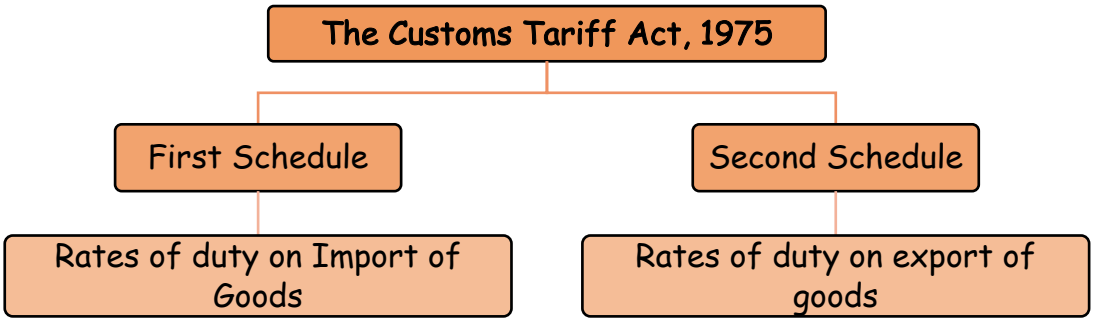
The duties of customs shall be levied

- at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force
- on goods imported into or exported from India.

1.2 - Rates of Basic Custom Duty - Section 2 of the Customs Tariff Act



1.3 – First Schedule

Standard Rate

- Generally, the standard rate of BCD is applicable

Preferential Rate

- Reduced tariff rates levied on the basis of trade agreements between two or more countries.

Conditions to be fulfilled for preferential rate of duty –

The importer will have to fulfil the following conditions to make the imported goods eligible for preferential rate of duty –

a) At the time of importation, he should ***make a specific claim for the preferential*** rate.
b) He should also claim that the goods are produced or manufactured in such preferential area.
c) The ***area should be notified under section 4(3)*** of the Customs Tariff Act to be a preferential area.
d) The ***origin of the goods*** shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act.

Second Schedule

- Second Schedule to the Customs Tariff Act ***provides for rate of export duty*** on goods exported out of India.
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- As per Foreign Trade Policy adopted by India, goods are to be exported and not the taxes. Hence, ***generally there are no export duties on goods exported out of India.***
- However, still there is a ***small list of goods on which export duty is leviable*** as a policy adopted by the Ministry on time-to-time basis.

2. INTEGRATED TAX - SECTION 3(7) OF CTA

- Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40%.
- IGST shall be applicable at the same rate as is applicable on goods supplied in India.

3. GOODS AND SERVICES TAX COMPENSATION CESS – SECTION 3(9) OF THE CTA

- GST compensation cess is levied on notified intra-state and inter-state supply of goods or services to provide compensation to the States for loss of revenue due to implementation of GST in India.
- Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess ***at such rate, as is leviable*** under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 ***on a like article on its supply in India***, on the value of the imported article as determined under sub-section (10) or sub-section (10A).
- As of now, GST compensation cess is levied on luxury and sin goods like pan masala, tobacco etc.

4. MANNER OF COMPUTING ASSESSABLE VALUE FOR LEVYING INTEGRATED TAX - SECTION 3(8) OF THE CTA

Value of imported article determined u/s 14 of the Customs Act,1962	XXX
Add: Customs duty chargeable u/s 12 of the Customs Act, 1962	XXX
Add: Any tax/cess chargeable on that article under any other law for the time being in force	XXX
Value for calculating IGST (and GST Compensation cess)	XXX

Notes:

- The assessable value for levying GST compensation cess is to be computed in the same manner as discussed above [Section 3(10)].
- The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall also apply to the duty chargeable under this section.

5. MANNER OF COMPUTING VALUE IN CASE OF WAREHOUSED GOODS - SECTION 3(8A) OF THE CUSTOMS TARIFF ACT

- Section 3(8A) determines the value, for the purpose of computing IGST, of goods deposited in a warehouse and are sold to any person before clearance for home consumption or export.
- The value of such goods shall be as follows –

Circumstance	*Value*
Whole goods are sold	Higher of – • Value u/s 3(8) of CTA, or • Transaction Value of such goods
Part of the goods sold	Higher or – • Proportionate value determined u/s 3(8) of CTA, or • Transaction value of such goods
Whole/part of goods sold more than once before clearance, the value of the last such transaction shall be the transaction value for computing the value as above.	

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- The value of warehoused goods which remain unsold shall be determined in accordance with Section 3(8) of CTA.

6. ADDITIONAL DUTY OF CUSTOMS - SECTION 3 OF CTA

6.1 - Additional duty - Section 3(1)

- Any article which is imported into India is also liable to a ***duty equal to the excise duty*** for the time being leviable on a like article if produced or manufactured in India. This duty is called as additional duty.
- Rate of additional duty – That percentage of the value of goods at which excise duty is leviable on like article produced in India.
- In case of any ***alcoholic liquor for human consumption*** imported into India, the Central Government may notify the rate of additional duty.

- Excise duty has been restricted to few goods such as ***Petroleum products*** (crude, diesel, petrol, ATF, natural gas) and ***Tobacco products***. Hence, duty u/s 3(1) is also restricted to these goods.

6.2 - Countervailing duty - Section 3(3)

- ***Purpose*** – Levied ***to counter balance the excise duty leviable on raw materials, components and ingredients*** of the same nature as, or similar to those, used in the production or manufacture of the imported article.
  This duty is levied to ensure that domestic manufacturers are at par with foreign manufacturers as domestic manufacturers would have incurred tax cost as excise duty on raw materials, components used to manufacture goods.
- The Central Government can levy such duty if it is satisfied that it is necessary in the public interest to do so even if such article is liable to additional duty leviable u/s 3(1).

6.3 - Special Additional duty - Section 3(5)

- ***Purpose – To counter-balance the sales tax, value added tax, local tax*** or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India.
- The CG shall notify any imported article which be liable to an additional duty at a ***rate not exceeding 4% of the value of the imported article*** as specified in that notification.
- Additional duty of customs will be levied only on the few products not leviable to GST.

7. PROTECTIVE DUTIES

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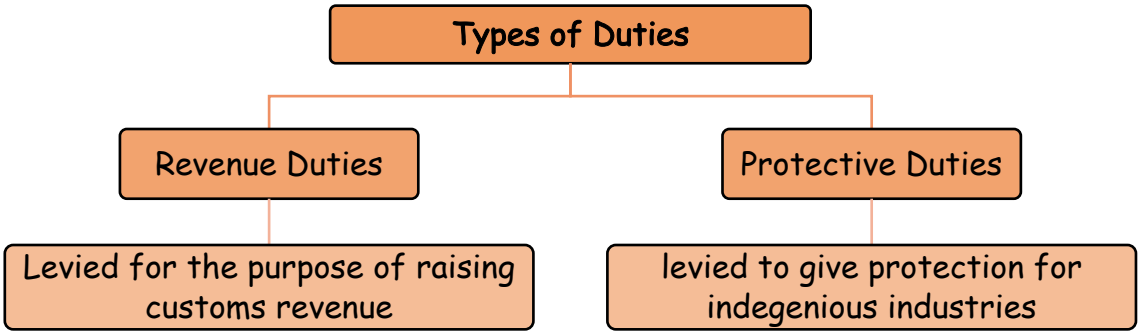

7.1 - Factors to be considered while giving protection through protective duties

i. It is ***not so stiff*** as to discourage imports.
ii. It is ***sufficiently attractive to encourage imports*** to bridge the gap between demand and supply of those articles in the market.

7.2 - Levied by the Central Government - Section 6 of CTA

- On the recommendation of the Tariff Commission and upon being satisfied those ***circumstances exist making it necessary to take immediate action to protect the Indian industries***, the CG shall levy protective duties.
- If protective duties are not levied there could be an overflow of cheap imported articles in the market making the indigenous goods unattractive.

7.3 - Duration of protective duties

- The protective duty shall be effective only up to and inclusive of the date if any, specified in the First Schedule [Section 7(1)].

7.4 - Power of Central Government to increase/decrease such duties

- The Central Government may reduce or increase the duty by notification in the Official Gazette, if it is satisfied, after such inquiry as it thinks necessary, that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it.
- In case of increase in duty, approval of Parliament shall be required.

Note: Section 6 of the Customs Tariff Act 1975 which provided for levy of protective duties in certain cases by the Central Government on the recommendations of the Tariff Commission is proposed to be omitted, as the Tariff Commission has been wound up by resolution dated 1st June 2022 by the Government of India - FINANCE ACT, 2024

8. - EMERGENCY POWER TO IMPOSE OR ENHANCE EXPORT DUTIES - SECTION 8 OF CTA

The Central Government may impose or enhance export duties by making amendment to the Second Schedule by issue of a notification in the Official Gazette.

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Conditions

- The goods should be specified in the First Schedule.
- The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties

9. EMERGENCY POWER TO IMPOSE OR ENHANCE IMPORT DUTIES - SECTION 8A OF CTA

The Central Government may impose or enhance import duties by making amendment to the First Schedule by issue of a notification in the Official Gazette.

Conditions

- The goods should be specified in the First Schedule.
- The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties

10. POWER OF CG TO APPLY SAFEGUARD MEASURES - SECTION 8B OF THE CTA

10.1 - Circumstances in which safeguard measures can be imposed by CG

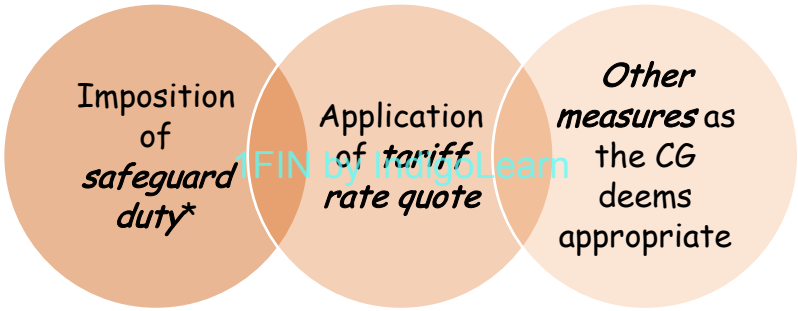
- Any is imported into india in increased quantities
- Such increased importation is causing or threatening to cause ***serious injury*** to domestic industry.

"Serious injury" means an injury causing significant overall impairment in the position of a domestic industry.

10.2 - Objective of safeguard measures

- To protect the interests of any domestic industry in India aiming to make it more competitive.

10.3 - Modes of safeguard measures



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*The safeguard duty is in addition to any other duty in respect of such goods levied under this Act or any other law for the time being in force.

10.4 - Duration of safeguard measures

- Duration of 4 years from the date of its imposition.
- The CG may extend the period of imposition if it is of the opinion that –
- Domestic industry has taken measures to adjust to such injury or such threat of injury, and
- It is necessary that the safeguard measures should continue to operate.
- However, the maximum period of levy of safeguard duty is restricted to 10 years.

10.5 - Exemptions from safeguard measures

Articles from developing countries	• Total ***share of imports*** of that article from such developing country ***does not exceed 3%*** of the total imports of that article into India.
Articles from more than one developing country	• Share of imports from each developing country does not exceed 3% of the total imports into India, and • ***Aggregate of imports*** from all developing countries ***does not exceed 9%*** of the total imports of that article
Imports by 100% EOU or units in SEZ	• ***Exception*** - It is specifically made applicable • ***Exception*** - The article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA

10.6 - Provisional Assessment

- ***The CG may impose provisional safeguard measures*** on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.
- ***Duration of provisional safeguard measures*** – maximum period of 200 days from the date of its imposition.
- ***Refunds*** – If ***upon final determination***, the Central Government is of the opinion that the ***increased imports have not caused or threatened to cause serious injury*** to a domestic industry, the safeguard duty collected shall be refunded.

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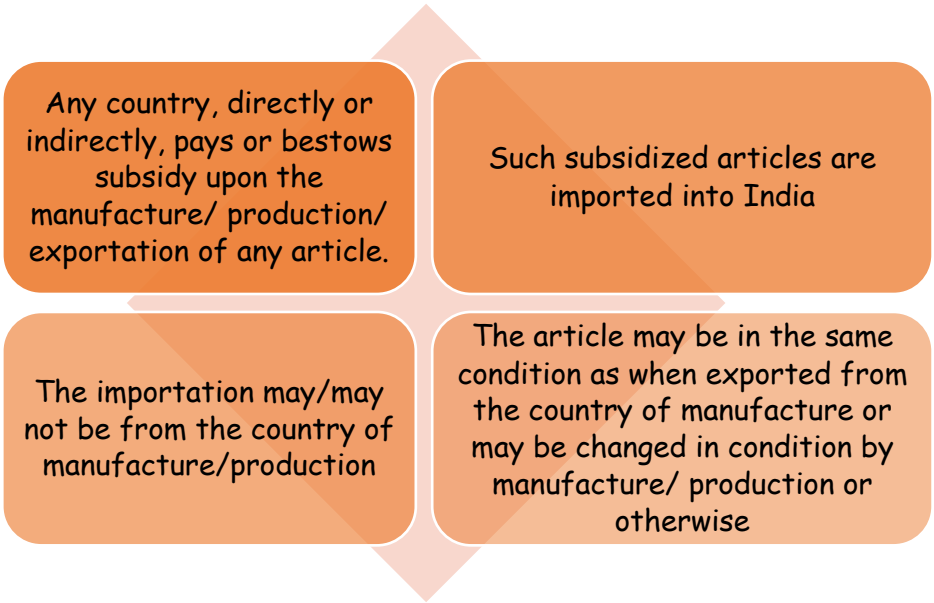
11. COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES - SECTION 9 OF THE CTA

11.1 - Conditions to be satisfied for imposing countervailing duty



Countervailing duty (CVD) shall not be levied unless it is determined that –

i. The subsidy ***relates to export performance***,
ii. The subsidy ***relates to use of domestic goods over imported goods in the export article***,
iii. The subsidy has been ***granted to a limited number of persons*** engaged in the manufacture/ production/ export of articles.

Subsidy shall be deemed to exist if-

a. *There is financial contribution by the Government or any public body in the exporting or producing country or territory. Such contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.*
b. *There is any form of income or price support granted or maintained by the Government, which results in increased export of such article or reduced import of any article into that country.*
c. *A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified above which*

11.2 - Anti-circumvention measure in respect of countervailing duty on subsidized articles

"Circumvent" means to find a way around a problem or difficulty in a clever or indirect way.

Where the CG is of the opinion that circumvention of CVD has taken place, it may extend the CVD to such other article also from such date, not earlier than the ***date of initiation of the inquiry, as the CG may***, by notification in the Official Gazette, ***specify***.

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Ways in which circumvention of CVD may take place –

- By altering the description or name or composition of the article,
- By import of the article in an unassembled or disassembled manner,
- By changing the country of its origin or export,
- Any other manner.

11.3 - Absorption of countervailing duty

Where the CG is of the opinion that absorption of CVD has taken place whereby the CVD so imposed is rendered ineffective it may –

- ***modify such duty*** to counter the effect of such absorption,
- ***from such date***, not earlier than the date of initiation of the inquiry,
- ***as may be specified by the CG*** by way of notification in the Official Gazette.

Absorption of CVD is said to have taken place –

i. if there is a ***decrease in the export price of an article without any commensurate change in the resale price in India*** of such article imported from the exporting country or territory; or
ii. under such ***other circumstances as may be provided by rules.***

11.4 - Non-applicability of countervailing duty

- CVD shall not apply ***to article imported by a 100% EOU or a unit in SEZ.***
- ***Exceptions –***
    - ***Specifically made applicable*** in such notification or to such undertaking or unit, ***or***
    - Such ***article is either cleared as such into the DTA*** or used in the manufacture of any goods that are cleared into the DTA.

11.5 - Amount of countervailing duty

- Countervailing duty is in addition to any other duty chargeable.
- Amount of CVD ***shall not exceed the amount of subsidy paid*** or bestowed.

11.6 - Duration of countervailing duty

- The CVD shall be in force for a period of ***5 years from the date of its imposition***.
- Extension of duration –
    - The ***CG may extend such period*** if it, in a review, is of the opinion that cessation of such duty is likely to lead to continuation or recurrence of such subsidization and injury.
    - However, the ***extension*** can be for a ***maximum period up to 5 years***.
    - If the review is not completed before the expiry of period of imposition, the duty may continue for further period not exceeding 1 year until the review is completed.
    - If the ***duty is revoked temporarily***, the period of revocation ***shall not exceed 1 year at a time***.

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11.7 - Provisional countervailing duty

- ***When the determination of the amount of subsidy is pending***, the CG may impose a ***provisional CVD not exceeding the amount of such subsidy as provisionally estimated*** by it.
- If the ***final subsidy determined is less*** than the subsidy provisionally determined, then the CG shall ***reduce such duty and also refund the excess*** duty collected.

11.8 - Retrospective imposition of countervailing duty

- CVD may be imposed retrospectively if the following conditions are satisfied –
    - The injury to domestic industry, which is difficult to repair, is caused by massive imports of subsidized articles in a relatively short period,
    - In order to preclude recurrence of such injury, it is necessary to levy CVD retrospectively.
- The ***retrospective date*** from which the duty is payable shall ***not be beyond 90 days*** from the date of notification.

12. ANTI-DUMPING DUTY - SECTION 9A OF THE CTA

When the **export price** of a product imported into India **is less than the Normal Value of 'like articles' sold in the exporting market,** it is known as "**dumping**".

Where any ***article is exported by an exporter or producer from any country*** or territory (hereinafter in this section referred to as the exporting country or territory) ***to India at less than its normal value***, then the CG may, by notification in the Official Gazette, impose an anti-dumping duty.

12.1 - Computation of anti-dumping duty

- The anti-dumping duty is in addition to any other duty imposed.
- Anti-dumping duty = Lower of:
    a) Margin of dumping, OR
    b) Injury margin

Case Law: Designated Authority vs Haldor Topsoe 2000 (SC)
Judgement: Anti-Dumping duty could be fixed with reference to prices in a territory and that European Union could also be a territory.

12.1.1 - Margin of dumping

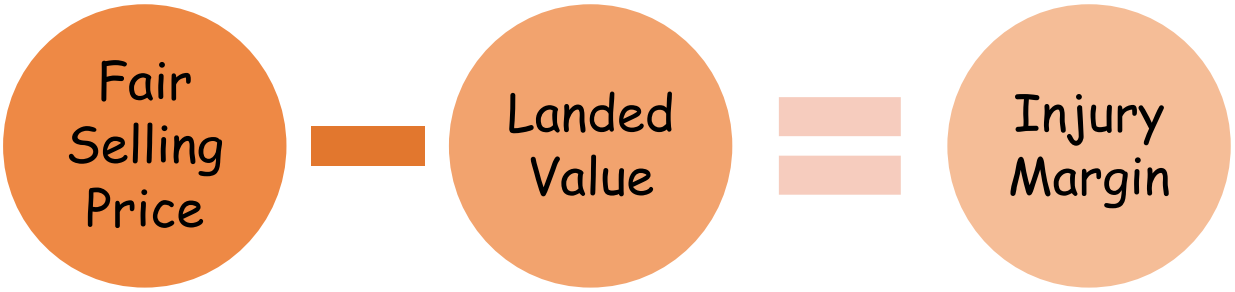
Margin of dumping means ***the difference between its export price and normal value***. It is generally expressed as a percentage of the export price.

- ***Export Price*** – The price of an article exported from the exporting country or territory.
- ***Constructed export price*** – Where there is no export price, or it is unreliable, the export price may be constructed –
    - ***Where the article is resold to an independent party*** – At the price at which the imported articles are first resold to an independent party.
    - ***Where it is not resold to an independent party or not resold in the same condition as imported*** – On such reasonable basis as may be determined in accordance with the rules made.
- ***Normal Value*** – Comparable price at which the goods under complaint are sold ***in the domestic market of the exporting country/territory*** in the ordinary course of trade.
- If the normal value cannot be determined as per the sales in the domestic market of exporting country – Normal value shall be
    a. Comparable representative price when exported to an appropriate third country, or
    b. Cost of production in country of origin + administrative, selling and general costs + profits.

The margin of dumping shall be determined on the basis of records concerning the normal value and export price maintained, and the information provided by the exporter or producer. However, where the exporter or producer fails to provide such records, it shall be determined on the basis of facts available.

12.1.2 - Injury margin

- The margin adequate to ***remove the injury to the domestic industry***.
- It is the ***difference between*** the ***Fair Selling Price*** [Non-Injurious Price (NIP)] due to the Domestic Industry and the ***Landed Value*** of the dumped imports.



- ***Fair Selling price (FSP)/ Non-injurious price (NIP) –***
  It is the fair selling price of a product for the domestic industry. It is the level of price, which is expected to have charged under normal circumstances in the Indian Market during the period defined.
- ***Landed Value*** – Is the assessable value under the Customs Act and the applicable basic customs duties except CVD, SAD and special duties.

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Case Law: Reliance Industries ltd. v. Designated Authority (SC)
Judgement: *There would be a single Non-Injurious Price for a product and not several Non-Injurious Price for the same product.*

12.2 - Circumvention of anti-dumping duty

- Where the ***CG***, on such inquiry, is of the opinion that circumvention of anti-dumping duty has taken place, it may –
  - ***extend the anti-dumping duty to such article*** or an article originating in or exported from such country, as the case may be
  - ***from such date, not earlier than the date of initiation of the inquiry***, as may be specified by the CG by notification in the Official Gazette.
- Ways in which circumvention of anti-dumping duty may take place is the same as that of countervailing duty.

12.3 - Absorption of Anti-dumping duty

- Where the CG is of the opinion that ***absorption of antidumping duty has taken place*** whereby the snit-dumping duty so imposed is rendered ineffective it may –
  - ***modify such duty*** to counter the effect of such absorption,

- ***from such date***, not earlier than the date of initiation of the inquiry,
- ***as may be specified by the CG*** by way of notification in the Official Gazette.

- ***Absorption of anti-dumping duty is said to have taken place –***
  - if there is a ***decrease in the export price of an article without any commensurate change in the resale price in India*** of such article imported from the exporting country or territory; or
  - under such ***other circumstances as may be provided by rules***.

12.4 - Provisional anti-dumping duty

- ***When the determination of the normal value and margin of dumping is pending***, the CG may impose a ***provisional anti-dumping duty*** on the basis of provisional estimate of such value and margin.
- If the ***provisional duty is higher than the margin finally determined***, then the CG shall ***reduce such duty and also refund the excess duty*** collected.

12.5 - Non-applicability of anti-dumping duty

- Anti-dumping duty shall not apply ***to article imported by a 100% EOU or a unit in SEZ.***
- ***Exceptions –***
  - ***Specifically made applicable*** in such notification or to such undertaking or unit, or
  - Such ***article is either cleared as such into the DTA*** or used in the manufacture of any goods that are cleared into the DTA.

12.6 - Imposition of duty with retrospective effect

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Anti-dumping duty shall be imposed with retrospective effect, ***by the CG by notification in the Official Gazette***, if the following conditions are satisfied –

a) ***There is a history of dumping which caused injury*** or that the importer was, or should have been, aware that the exporter practices dumping, and
b) The ***injury is caused by massive dumping*** of an article imported ***in a relatively short time*** which is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The ***retrospective date*** from which the duty is payable ***shall not be beyond 90 days*** from the date of such notification.

12.7 - Duration of Anti-dumping duty

- The duty shall be in force for a period of ***5 years from the date of its imposition***.
- Extension of duration –
  - The ***CG may extend such period*** if it, in a review, is of the opinion that cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.
  - However, the ***extension*** can be for a ***maximum period up to 5 years*** commencing from the date of such extension.
  - If the review is not completed before the expiry of period of imposition, the duty may continue for further period not exceeding 1 year until the review is completed.

- If the ***duty is revoked temporarily***, the period of revocation ***shall not exceed 1 year at a time***.

> ***Case Law: Rishiroop Polymers Pvt. Ltd. v. Designated Authority and Additional Secretary (SC)***
>
> ***Judgement:*** *The entire purpose of the review enquiry is not to see whether there is a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase, and the domestic industry would suffer.*

12.8 - Refund of anti-dumping duty - Section 9AA of CTA

- Where the importer proves that he has ***paid anti-dumping duty in excess*** of the actual margin of dumping in relation to such article –
  - the ***CG shall***, as soon as may be, ***reduce such anti-dumping duty*** as is in excess, ***and***
  - such importer shall be entitled to ***refund of such excess duty***.

13. NO LEVY UNDER SECTION 9 OR SECTION 9A IN CERTAIN CASES - SECTION 9B OF THE CTA

- ***No article shall be subjected to both CVD and anti-dumping duty*** to compensate for the same situation of dumping or export subsidization.
- No duty u/s 9 or 9A just because such articles are –
  - Exempt from duties in the country of origin/ exportation, or
  - Refunded such duties/ taxes.

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- No duty u/s 9 or 9A on imports from –
  - ***A member country of WTO***, or
  - A country with whom the GOI has a ***most favored nation*** agreement, or
  - ***Specified countries.***
- ***Note:*** These points shall not be applicable in a case where countervailing or anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India.

14. APPEAL - SECTION 9C OF THE CTA

- An appeal against the order of determination or review thereof ***shall lie to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT)*** in respect of the existence, degree and effect of –
  - any subsidy/dumping in relation to import of any article, or
  - import of any article into India in such increased quantities and under such condition that causes or threatens to cause serious injury to domestic industry.
- ***Fees for appeal –***
  - Every appeal made to the CESTAT shall be accompanied by a fees of ₹15,000/-.
  - Every application made in an appeal for grant of stay or for rectification of mistake, or for restoration of an appeal/application shall be accompanied by a fee of ₹500/-.
- ***Time limit for filing appeal –***
  - Within 90 days of the date of order under appeal.

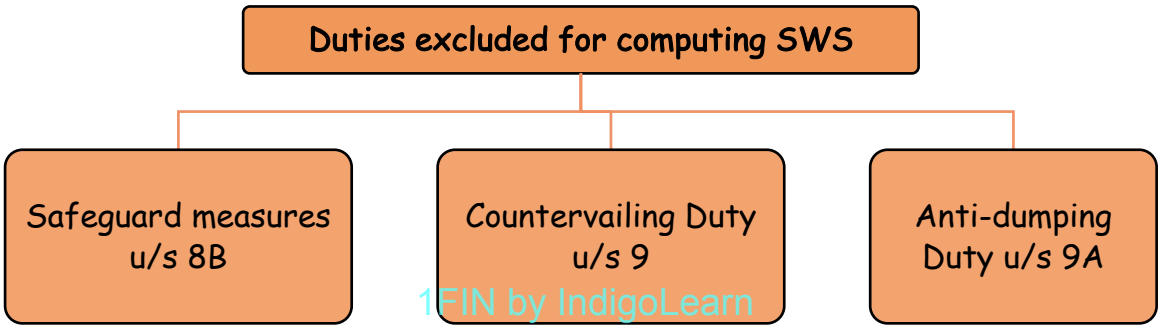
- Delay shall be condoned if the Appellate Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- ***Order of the CESTAT –***
  - The CESTAT may pass an order confirming, modifying or annulling the order appealed against.
  - The parties to the appeal shall be given an opportunity of being heard.

15. SOCIAL WELFARE SURCHARGE [SWS] ON IMPORTED GOODS

- Social welfare surcharge (SWS) @ ***10%*** is levied in lieu of education cesses ***for providing and financing education, health and social security***.
- ***Calculation of SWS –***

Customs duty chargeable u/s 12 of the Customs Act, 1962	xxx
Add: Any tax/cess chargeable on that article under any other law for the time being in force	xxx
Value for calculating SWS	**XXX**



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16. AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS ON IMPORT OF CERTAIN ITEMS

- An Agriculture Infrastructure and Development Cess (AIDC) has been levied on import of specified goods at the notified rate to finance ***the improvement of agriculture infrastructure and other development expenditure.***
- ***For the purposes of calculating the AIDC, the value of such goods is calculated*** in the ***same manner as the value of goods is calculated for the purpose of customs duty*** under section 14 of the Customs Act, 1962.
- ***Examples of notified goods –*** Apples, kabuli chana, coal, urea, silver, Silver dore, gold, gold dore etc.
- The AIDC on imported goods is in addition to any other duties of customs chargeable on such goods.

ILLUSTRATIONS

Illustration 1

Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

Import of Sodium Nitrite from a developing country from 26th February,2017 to 25th February 2018 (both days inclusive)	30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic custom duty	10%
Integrated tax	18%
Social welfare surcharge	10%

Illustration (Countervailing Duty)

A Ltd. imported flat rolled products of stainless steel, with CIF value $40,000 from China.

- Exchange-rate was 1$ = Rs. 45 on the date of presentation of bill of entry.
- Basic customs duty @ 10%
- Social welfare surcharge @ 10%
- Said products if imported from China is liable to Anti-subsidy duty @ 18.95% of landed value.
- IGST on similar product supplied in India @18%

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You are given that, Landed value for levy of Anti-subsidy duty = Customs value + all duties of customs (except duties levied as per Section 3,3A, 8A,9,9A of Customs Tariff Act).
Calculate Total Customs Duty

Illustration 2

ABC imported certain goods weighing, 1000 kgs. with CIF value US$ 40,000.

Exchange Rate: 1$ = Rs.45, on date of presentation of bill of entry. BCD: 10%, SWS: 10%, IGST: 12%

As per notification issued by Gov. of India, Anti-dumping duty shall be imposed.

The Anti-dumping duty will be, difference between, amount calculated $60/kg. and landed value of goods. Compute Customs Duty.

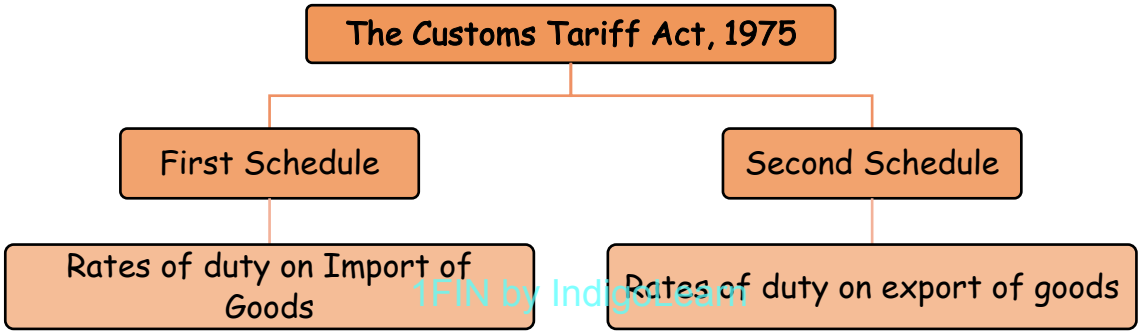
3. CLASSIFICATION OF IMPORTED AND EXPORT GOOODS

Contents

- Need for classification of goods.
- General explanatory notes of the First Schedule.
- The 6 General Rules of Interpretation.
- Project Imports.

1. CUSTOMS TARIFF

- One of the important steps in assessing the amount of duty payable is ***classification of the goods with reference to HSN system specified under Customs Tariff Act, 1975***.
- ***The correct classification of goods is necessary to ascertain the rate of custom duty.***



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1.1 - Rules of interpretation and explanatory notes

- The Indian Customs Tariff is based upon the ***Harmonized System of Nomenclature (HSN)***.
- The HSN is an ***internationally standardized system of names and numbers for classifying traded products*** which was developed and maintained by the World Customs Organization (WCO)
- The CTA, 1975 also has a set of ***General Rules of Interpretation of the First Schedule*** which inter alia contains the ***General explanatory notes.***
- These rules of interpretation and general explanatory notes –
  - gives ***clear direction*** as to how the nomenclature in the schedule is to be interpreted, and
  - also gives ***statutory force*** to the interpretative rules and the general explanatory notes by their inclusion as part of the First Schedule.

1.2 - First Schedule of the Customs Tariff

Comprises of ***98 chapters*** grouped under ***21 sections***.

Sections	• A group of chapters representing a particular class of goods.
Chapters	• Each section is divided into various chapters and sub-chapters containing goods of a particluar class.
Chapter Notes	• Mentioned at the beginning of each chapter. Have the legal authority in determining the classification of goods.
Heading	• Each chapter and sub-chapter is further divided in headings.
Sub-heading	• Each heading is further divided into sub-headings.

2. GENERAL EXPLANATORY NOTES

There are ***3 general explanatory notes*** included in the First Schedule.

2.1 - Relevance of one dash ["-"] , two dash ["--"] and three dash ["---"]

One dash ["-"]	Two dash ["--"]	Three dash ["---"] or ["----"]
• Description of an article/group thereof under a heading is preceded by "-" • Denotes that said article/group therof shall be the sub-classification of the heading	• Denotes that said article/group therof shall be the sub-classification of the immediately preceding article/group thereof which has "-".	• Denotes that said article/group therof shall be the sub-classification of the immediately preceding article/group thereof which has "-" or "--".

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2.2 - Meaning of abbreviation "%" in relation to the rate of duty

- The ***duty shall be computed at the percentage specified*** on the value of the goods as defined in section 14 of the Customs Act.

2.3 - Standard rate of duty applicable if no preferential rate specified

- In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.

3. RULES OF INTERPRETATION OF THE FIRST SCHEDULE TO THE CTA

3.1 - Rule 1 – General Rule of Classification

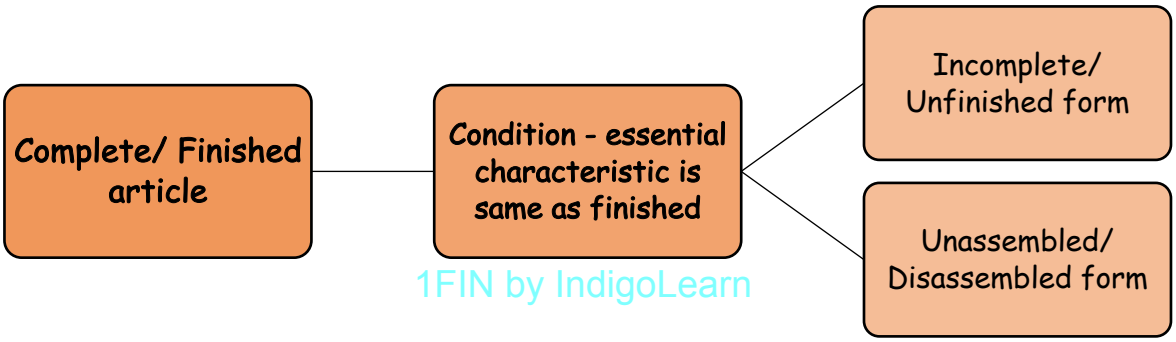
- For legal purposes classification shall be determined according to the terms of the headings and any relative section or chapter notes and the subsequent rules.

- The rules of interpretation need not be resorted to when classification is possible on the basis of description in heading, sub-heading, chapter notes and section notes.
- Notes of one chapter or section cannot be applied for interpreting entries in other chapters or sections.

3.2 - Rule 2(a) – Classification of Incomplete/Unfinished Articles

- ***Any incomplete/unfinished article shall be covered under the same heading as that of the complete/finished form of that article.***
- ***Condition*** – The incomplete/unfinished article have the essential characteristics of the finished article.
- ***Any unassembled/dis-assembled article shall be covered under the same heading as that of the complete/finished form of that article.***
- ***Condition*** – The incomplete/unfinished article have the essential characteristics of the finished article.

  Example: A car without seats would still be classified as a car.



3.3 - Rule 2(b) – Classification of Mixtures/Combinations of a Material/Substance with Other Materials/Substances

- Any ***reference to a material or substance*** would ***refer to mixture or combination*** of that material or substance.
- Any reference to goods containing a particular material or substance would include a reference to goods consisting wholly or partly of such specified material or substance.

  Example: The term coffee will include coffee mixed with chicory.

3.4 - Rule 3 – Classification in case goods are classifiable under two or more headings

- The application of this rule arises when the goods consist of more than one material or substance.

3.4.1 - Rule 3(a) – Specific over general

- ***The heading that provides a more specific description should be preferred*** over the heading that provides a general description.

3.4.2 - Rule 3(b) – Essential character principle

- Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which ***cannot be classified with reference to (a)***, shall be ***classified as if they consisted of material which gives them their essential character.***
- ***Example***: ***Product*** – Lead pencil with an eraser at the back.
- ***Classification*** – Though the above product is composite goods, the essential character is that it is a pencil. Therefore, it shall be classified as a pencil and not as an eraser.

3.4.3 - Rule 3(c) – Latter the better

- When goods cannot be classified by reference to (a) or (b), they shall be ***classified under the heading which occurs last in numerical order*** among those which equally merit consideration.

Case Law: Mahindra and Mahindra v. CCE [1999 (109) E.L.T. 739 (Tribunal)

Facts: *Goods cleared by assessee were equally classifiable under the following two headings –*

a) *Heading No. 8703: Motor cars and other vehicles principally designed for the transport of persons.*
b) *Heading No. 8704: Motor vehicles meant for transport of goods.*

Judgement: *It was held that heading 8704 occurs last and as both the headings equally merit classification, goods shall be classified under 8704.*

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3.5 - Rule 4 – Akin Rule

If the goods cannot be classified in accordance with the earlier rules, they shall be classified under the heading in which the most akin (i.e., similar) goods are classified.

3.6 - Rule 5 – Classification of packing materials and containers

3.4.4 - Rule 5(a) – Classification of cases/containers used for packaging of goods

- Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended shall ***follow the classification of the items which are packed.***
- ***Conditions*** –
  - These cases/containers are ***specially shaped/fitted to contain a specific article or a set of articles.***
  - These cases/containers are –
    - ***suitable for long term use and***
    - ***presented with the articles for which they are intended.***
- ***Exception*** –
  - When packing material itself gives the essential character as a whole.

3.4.5 - Rule 5(b) – Classification of packing materials and packing containers

- Packing materials and packing containers presented with the goods therein ***shall be classified with the goods, if they are of a kind normally used for packing such goods.***
- ***Example***: Leather cases which are normally supplied along with the goods, need not be classified separately, however costly they might be.
- ***Exception*** –
  - Durable containers capable of repetitive use should be classified separately.

3.7 - Rule 6: Only Sub-Headings at the Same Level are Comparable

- This implies that a sub-heading can be compared only with another sub-heading within the same heading.

4. PROJECT IMPORTS

- Project Imports are the ***imports of machinery, instruments, and apparatus etc.***, falling under different classifications, ***required for initial set up of a unit or for substantial expansion of an existing unit.***
- Since each of these ***different items are required to be imported at different rates*** of customs duties, it is ***difficult to make assessment*** of each item separately.
- Hence, ***for such project imports one consolidated rate of customs duty has been made applicable*** for all items imported under a project irrespective of the nature of the goods and their customs classification.
- The ***items eligible for project import*** are specified in ***Heading 9801*** of the Customs Tariff Act, 1975 and includes –
  - All items of machinery,
  - Instruments, apparatus, and appliances,
  - Components of raw materials,
  - Spare parts, raw materials and consumables up to 10% of the value of goods.
- ***Eligible projects*** –
  - Industrial Plants,
  - Irrigation Projects,
  - Power Projects,
  - Mining Projects,
  - Projects for Oil or Mineral Exploration and
  - Other projects notified by the CG

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5. SOME JUDGEMENTS ON CLASSIFICATION

5.1 - Saurashtra Chemicals v. CC 1986 (Tri-LB) [approved by SC]

Issue – The importance of section notes, and chapter notes in the classification of goods.

Judgement – Section notes, and Chapter notes are a part of the statute and thus are relevant in the classification of goods. These notes sometimes restrict and sometimes expand the scope of headings. Thus, in the sense, these notes have an overriding effect on the headings.

5.2 - CC v. Maestro Motors Ltd. 2004 (SC)

Judgement – If a tariff heading is specially mentioned in exemption notification, the general interpretative rules would be applicable to such exemption notification. But, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for the purpose of classification, it may be otherwise.

5.3 - CC v. Hewlett Packard India Sales (p) Ltd. 2007 (SC)

Facts – The assessee was engaged in the manufacture of, and trading in, computers including Laptops falling under Heading 84.71 of the CTA Schedule. They imported Notebooks (Laptops) with Hard Disc Drivers preloaded with Operating Software. These computers were also accompanied by separate Compact Discs (CDs) containing the same software, which were intended to be used in the event of Hard Disc failure.

Issue – The assessee classified the software separately and claimed exemption.

Judgement – Without the OS the laptop cannot work. Therefore, the laptop along with the software has to be classified as laptop and valued as a single unit.

5.4 - Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (SC)

Facts – The department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 01.03.2002 exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

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Issue – Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?

Judgement – Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 01.03.2002, the said classification needs to be accepted for the period prior to it.

5.5 - M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (Mad.)

Issue –

i. Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification?
ii. Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?

Judgement –

i. The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test.

ii. Under Section 75A(2), when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. No notice for the payment of interest need be issued separately.

6. OVERVIEW

- ***The correct classification of goods is necessary to ascertain the rate of duty.***
- The classification is based on the ***Harmonized System of Nomenclature (HSN).***
- The First schedule of the CTA, 1975 contains ***General Rules of Interpretation and General Explanatory Notes.***
- ***General Explanatory Notes –***

Relevance of one dash, two dash and three dash	"-" sub-classification of the heading above.
	"--" sub-classification of immediately preceding article having "-".
	"---" sub-classification of immediately preceding article having "--".
Abbreviation '%' in relation to rate of duty	Duty shall be computed at the percentage specified.
Standard rate of duty applicable if not preferential duty specified.	

- ***Rules of Interpretation of the First Schedule –***

Rule 1: General Rule of Classification	Classification shall be determined according to the terms of the headings and any relative section or chapter notes and the subsequent rules.
Rule 2(a): Classification of Unfinished/ Incomplete Article	Covered under the same heading as that of the complete/finished form of that article (condition - essential characteristic)
Rule 2(b): Classification of Mixtures or combination of substances/materials	Any reference to a material or substance would refer to mixture or combination of that material or substance.
Rule 3: Classification where goods are classifiable under more than one heading	(a) Specific over general (b) Essential character principle (c) Later the better
Rule 4: Akin Rule	Where goods which cannot be classified in accordance with the above rules, shall be classified under the head appropriate to the goods to which they are most akin.
Rule 5: Classification of packing materials and containers	(a) Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended shall follow the classification of the items which are packed. (b) Packing materials and packing containers presented with the goods therein shall be classified with the goods, if they are of a kind normally used for packing such goods.
Rule 6: Only sub-headings at the same level are comparable.	

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- ***Project Imports -***
    - Whenever an ***industrial/ similar project is going to be installed or an existing unit is to be expanded***, several different machineries, raw-materials, components etc. are required. ***All these machineries, raw materials etc., are called project import***.
    - For project imports ***one consolidated rate of customs duty*** has been made applicable for all items imported under a project irrespective of the nature of the goods and their customs classification.
    - The items eligible for project import are specified in ***Heading 9801*** of the Customs Tariff Act, 1975.

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4. VALUATION UNDER THE CUSTOMS ACT, 1962

Contents

- Understand the terms used in the course of valuation.
- Concept of transaction value u/s 14.
- Determination of exchange rates.
- Customs valuation rules relating to imported goods.
- Customs valuation rules relating to export goods.
- Date for determination of rate of duty.
- Calculation of duty of sets of articles and accessories.

1. INTRODUCTION

- The ***manner in which duties of customs are charged*** on goods imported into India or goods exported from India is basically either by way of –
  a. ***Specific duty based on the quantity*** of the goods, or
  b. ***Ad valorem duty*** expressed as percentage of the value of the goods.
- "***Value in relation to any goods***" is defined u/s 2(41) of the Customs Act, 1962 as the value thereof ***determined u/s 14.***
- ***Customs duty is a tax on the goods***, and it is not a tax on the person having or owning the goods. ***The charge of tax attaches to the goods***. Unless the tax liability is discharged, the goods are not allowed to proceed further.
- The valuation for customs duty follows that -
  - There should be ***uniformity*** in tax burden.
  - Since the rate of duty is already fixed for like goods, the ***value of goods should be uniform for all imports / exports for like goods*** at the same time and place.
  - The value of the goods should be ***proximate to the point of taxation.***
  - ***Variations in the price agreed in each transaction*** on account of factors other than in the course of normal international wholesale trade ***should be adjusted***.

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2. TERMS USED IN COMMERCIAL PARLANCE

Sl. No.	Terms	Meaning
1.	**Invoice**	Basic commercial document showing particulars regarding description of goods such as quantity, unit price, discount, net price, names of consignor and consignee, payment details.
2.	**Packing specification**	Gives particulars of contents of each package in the consignment.
3.	**Certificate of Origin**	A certificate issued by the competent authority in the country of manufacture.
4.	**Bill of Lading**	A negotiable document given by the carriers of the cargo giving particulars of -

		• Port of shipment • No. of packages covered by the consignment • Marks and numbers on the page • Name of the vessel in which the goods have been dispatched • Name of the consignee of the goods, • Status of freight payment.
5.	**Air Consignment Note**	A document corresponding to Bill of Lading, in the case of cargo imported or exported by air
6.	**Indent**	A document showing the particulars of the consignment for which the buyer has placed an order with the supplier.
7.	**Quotation**	A document, which indicates the price, the terms and other conditions on which the seller is willing to supply goods to the buyer.
8.	**Letter of Credit**	An instrument delivered by the bank intimating the seller that the buyer has instructed the bank and the bank will according to these instructions pay the seller of the goods, the bill amount for the supply of the goods on presentation of certain documents evidencing shipment of the goods.
9.	**Sight draft**	A documentary bill of exchange between importer and exporter, promising payment to exporter immediately on delivery of original negotiable documents to the importer through banking channel.
10.	**Mate's Receipt**	A receipt given by the First mate or First officer or cargo supervisor of the conveyance certifying the total quantity of the consignment received on board the vessel or the aircraft.

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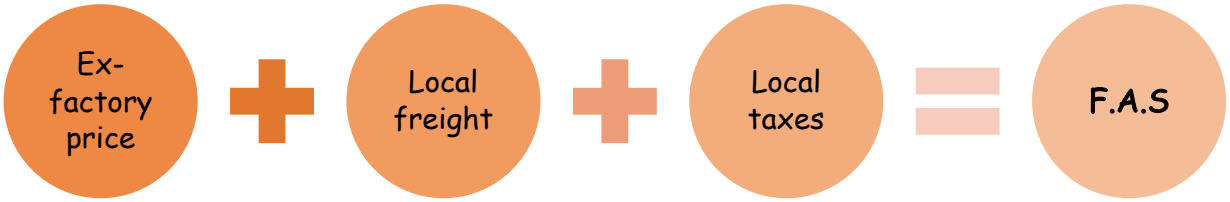
3. TECHNICAL TERMS RELATING TO VALUE IN THE COURSE OF IMPORT OR EXPORT - INTERNATIONAL COMMERCIAL (INCO) TERMS

3.1 - Ex-Factory Price

- It is the ***price*** of the goods ***at the factory gate.***
- It ***includes*** cost of production and manufacturer's margin of profit, and
- ***Excludes*** cost of freight for outward delivery of goods.

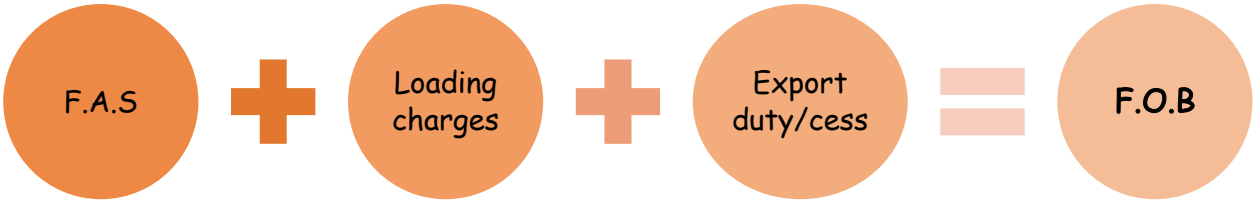
3.2 - F.A.S. (Free Alongside)

- The ***cost at which the export goods are delivered alongside the ship***, ready for shipment.



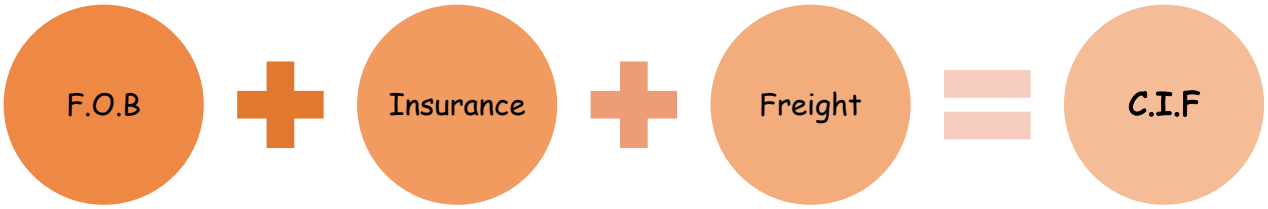
3.3 - F.O.B. (Free on Board)

- FOB means the stage at which the ***goods are placed on board the conveyance carrying the vessel.***



3.4 - C.I.F. (Cost Insurance Freight)

- ***The cost at which the goods are delivered at the Indian port.***
- It is also sometime called CFC.



4. TWO APPROACHES FOR COMPUTING THE ASSESSABLE VALUE

- Generally, the value declared by the importer, i.e., ***the declared value, shall be accepted by the customs officers*** subject to fulfilment of conditions.
- However, ***where the declared value is not acceptable in law, the following approaches may be used by the customs officer -***
  - i. The ***wholesale market price*** of the goods giving necessary abatements to adjust the post-importation costs. 1FIN by IndigoLearn
  - ii. The ***value given in the invoice*** adjusting for factors influencing the price in individual transactions.

5. VALUATION OF GOODS BASED ON SECTION 14

Section 14 of the Customs Act, 1962 prescribes the ***mode of identifying the value of imported or export goods for the purpose of payment of customs duty.***

5.1 - Transaction Value

- For the purpose of the CTA the ***value of the imported goods and export goods*** shall be the ***'transaction value'*** of such goods.

Transaction Value

In case of Export goods	In case of Imported goods

• The price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
• Conditions -
  • The buyer and seller of the goods are not related.
  • Price shall be the sole consideration for the sale.
	• The price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.
	• Conditions -
	  • The buyer and seller of the goods are not related.
	  • Price shall be the sole consideration for the sale.

- In simple words, in case of imported goods assessable value is nothing but the C.I.F. value.
- The transaction value shall also include in addition to the price above, the following amount paid or payable –
  - commissions and brokerage,
  - engineering,
  - design work,
  - royalties and licence fees,
  - costs of transportation to the place of importation,
  - insurance
  - loading,
  - unloading and
  - handling charges

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5.2 – Conversion Dates

Imported goods

Rate of exchange prevalent on the date of filling bill of entry u/s 46

Export goods

Rate of exchange prevalent on the date of filing shipping bill or bill of export u/s 50

Case Law: Samar Timber Corporation v. ACC 1995 (Bom.)

Judgement: *Relevant date in respect of rate of duty payable is the date of presentation of Bill of Entry and not date of re-presentation after correction.*

5.3 - Currency Conversion Rate

For the purpose of customs valuation, "rate of exchange" means the rate of exchange-

a. determined by the Board, or
b. ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or vice versa.

Thus, for the purpose of valuation under customs laws, rate notified by CBIC (Board) shall be taken into account.

5.4 - Tariff Value

The ***Board may fix tariff values*** for any class of imported goods or export goods by notification in the Official Gazette if it is satisfied that it is necessary to do so. Where any such tariff values are fixed, ***the duty shall be chargeable with reference to such tariff value***.

6. CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007

The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 apply to ***imported goods.***

6.1 - Rule 3 – Determination of the Method of Valuation

6.1.1 - Value of imported goods [Rule 3(1) & (2)]

The value of imported goods shall be the ***transaction value adjusted in accordance with provisions of rule 10***, subject to the following conditions –

A) ***There are no restrictions as to the disposition or use of the goods by the buyer*** other than restrictions which –

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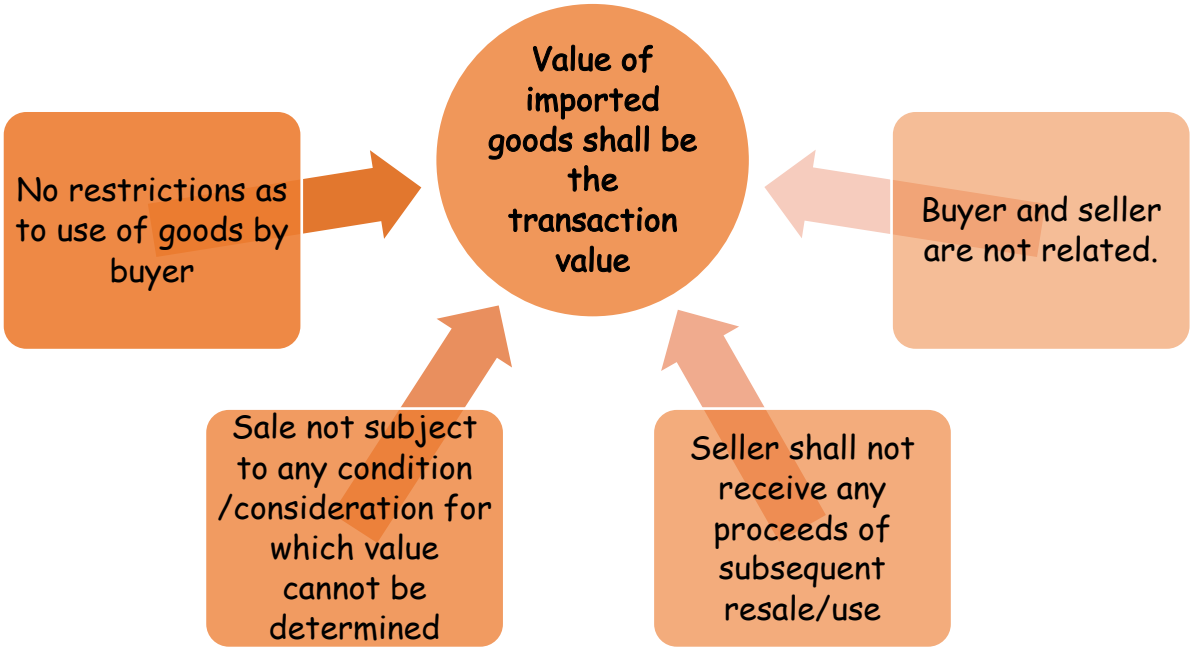
i. are imposed or required by law or by the public authorities in India, or
ii. limit the geographical area in which the goods may be resold, or
iii. do not substantially affect the value of the goods.

B) The sale or price is ***not subject to some condition or consideration for which a value cannot be determined.***

C) The ***proceeds of any subsequent resale***, disposal or use of the goods by the buyer ***shall not accrue directly or indirectly to the seller***, unless proper adjustment has been made in accordance with rule 10.

D) The buyer and seller are ***not related***.



6.1.2 - Where the buyer and seller are related parties - Rule 3(3)

- The ***transaction value*** shall be ***accepted*** as the value of imported goods ***if***,
  - Upon examination of the circumstances of such sale, it is clear that ***the relationship does not influence the price.***
  - The importer demonstrates that the ***declared value of the goods closely approximates to one of the following values*** –
    - the ***transaction value*** of identical goods/ similar goods, ***in sales to unrelated buyers*** in India,
    - the ***deductive value*** for identical goods/ similar goods,
    - the ***computed value*** for identical goods/ similar goods.

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Meaning of few terms used -	
Related persons	*Persons shall be deemed to be "related" only if –* *i) they are **officers/directors of one another's businesses,*** *ii) they are legally recognised **partners** in business,* *iii) they are **employer and employee,*** *iv) any person directly or indirectly **owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them,*** *v) **one** of them directly or indirectly **controls the other,*** *vi) **both** of them are directly or indirectly **controlled by a third person,*** *vii) together they directly or indirectly **control a third person,*** *viii) they are **members of the same family.***
Computed value	*Value of imported goods determined in accordance with **rule 8.***
Deductive value	*Value determined in accordance with **rule 7.***
Identical goods	*Imported goods –* *i) which are **same in all respects,*** *ii) produced in the country in which the goods being valued were produced, and* *iii) produced by the same person who produced the goods , or where such goods are not available, goods produced by a different person but*

	shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.
Similar goods	*Imported goods –* *i) having **like characteristics and like component materials** which enable them to perform the same functions and are commercially interchangeable with the goods being valued,* *ii) produced in the country in which the goods being valued were produced, and* *iii) produced by the same person who produced the goods , or where such goods are not available, goods produced by a different person but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.*

6.1.3 - Where transaction value cannot be determined - Rule 3(4)

If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by ***proceeding sequentially through rule 4 to 9***.

6.2 - Rule 4 – Transaction Value of Identical Goods

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6.2.1 - Identical goods at the same commercial level - Rule 4(1)

- Where rule 3 fails, the value of imported goods shall be the ***transaction value of identical goods*** at the ***same commercial level and substantially the same quantity*** as the goods being valued which are ***sold for export to India and imported at about the same time.***
- ***Where sale at same commercial level and in substantially same quantity is not available***, the transaction value of identical goods sold at a different commercial level or in different quantities or both, appropriately adjusted to take account of the difference shall be used.

6.2.2 - Adjustments on account of difference in distance and means of transport - Rule 4(2)

- An adjustment shall be made if there are ***significant differences in costs and charges*** referred in rule 10 between the goods valued and identical goods in question ***arising from differences in distances and means of transport.***

6.2.3 - More than one transaction value of identical goods id found - Rule 4(3)

- If more than one transaction value of identical goods is found, the ***lowest such value shall be used*** to determine the value of imported goods.

6.3 - Rule 5 – Transaction Value of Similar Goods

- Subject to rule 3, the value of imported goods shall be the ***transaction value of similar goods sold for export to India and imported at or about the same time*** as the goods being valued.

- The remaining provisions of Rule 4 shall, mutatis mutandis, also apply to similar goods.

6.4 - Rule 6 – Determination of value where value cannot be determined under Rules 3, 4 and 5

- Where the value of imported goods cannot be determined in accordance with rules 3,4 and 5, the ***value shall be determined as per rule 7***.
- When the ***value cannot be determined under rule 7*** also, ***rule 8*** shall be followed.
- ***The order of application of rules 7 and 8 can be reversed –***
    - At the ***request of the importer***, and
    - With the ***approval of the proper officer (P.O.)***.

6.5 - Rule 7 – Deductive Value

6.5.1 - Where similar/ identical goods are sold in India - Rule 7(1)

If the goods being valued or identical or similar imported goods are sold in India, in the ***condition*** as imported ***at the time of valuation***, -

- The ***value of goods shall be based on the unit price*** at which those goods are ***sold in the greatest aggregate quantity*** to unrelated persons in India.
- ***Following deductions*** shall be made while calculating the value –
    - i. ***Commission paid, general expenses and additions for profits,***
    - ii. ***Costs of transport and insurance and associated costs*** incurred within India,
    - iii. ***Customs duties and other taxes*** payable in India.

Example: For "unit price at which goods are sold in the greatest aggregate quantity"

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Sale quantity	Unit price (₹)	No. of sales	Total quantity sold
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold is 80 units. Therefore, the unit price in the greatest aggregate quantity is ₹ 90/-.

6.5.2 - Where identical/ similar goods are not sold at the same time - Rule 7(2)

The value of imported goods shall be based on –

- the ***unit price*** at which these goods are sold in India,
- ***at the earliest date after importation***
- but ***before the expiry of 90 days*** after such importation.

6.5.3 - Where identical/similar goods are not sold in the condition as imported - Rule 7(3)

- The value shall be based on the ***unit price*** at which the imported goods, a***fter further processing***, are sold in the greatest aggregate quantity to unrelated persons in India.
- Due allowance shall be made for the value added by processing and the deductions under sub-rule (1).

6.6 - Rule 8 – Computed Value

Subject to provisions of rule 3, the value of imported goods shall be based on a computed value, which ***shall consist of the sum of –***

i. ***Cost of materials*** and fabrication and other processing employed in producing the imported goods.
ii. ***Profit and general expenses***,
iii. ***Other expenses under rule 10(2)***.

6.7 - Rule 9 – Residual Method

6.7.1 - Value to be determined on reasonable basis - Rule 9(1)

- Where the value of imported goods ***cannot be determined under the provisions of any of the preceding rules, the value shall be determined using –***
  - ***reasonable means*** consistent with the principles and general provisions of these rules and
  - on the basis of ***data available*** in India.
- ***The value so determined shall not exceed the price at which such or like goods are ordinarily sold*** or offered for sale at the time and place of importation in the course of international trade, when the buyer and seller are unrelated, and price is the sole consideration.

6.7.2 - Restrictions while using residual method - Rule 9(2)

The value shall be determined based on –

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i. The ***selling price*** in India ***of goods produced in India***,
ii. A system which provides for acceptance of the ***highest of two alternative values***,
iii. The ***price*** of the goods in the domestic market of the ***country of exportation***,
iv. ***Cost of production*** except as per rule 8,
v. The ***price*** of goods ***for export to a country outside India***,
vi. ***Minimum customs values***, or
vii. ***Arbitrary or fictitious values***.

Case Law: Sanjay Chandiram v. CC 1995 (SC)
Judgement: *The residuary method can be considered if valuation is not possible by any other method.*

6.8 - Rule 10 – Cost and Services

6.8.1 - Value of costs and services to be included in price [Rule 10(1)]

In determining the transaction value, the following shall be added to the price paid or payable for the imported goods –

The ***flow of dividends or other payments*** from the buyer to the seller that do not relate to the imported goods are ***not part of the customs value.***

A. To the extend they are incurred by the buyer and not included in price actually paid/payable–

- ***Commissions and brokerage*** (except buying commission),
- ***Cost of containers,***
- ***Cost of packing*** whether for labour or materials.

B. The value of ***following goods and services supplied directly or indirectly by the buyer*** free of cost/ at reduced cost for use in connection with the production and sale for export of imported goods –
   - ***Materials, components, parts, and similar items incorporated*** in the imported goods,
   - ***Materials consumed*** in the production of the imported goods,
   - ***Tools, dies, moulds and similar items*** used in the production of the imported goods,
   - ***Engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in India*** and necessary to produce the imported goods.

C. ***Royalties and license fees*** related to the imported goods that the buyer is required to pay,

D. ***Proceeds of any subsequent resale***, disposal or use of imported goods that accrues to the seller,

E. ***All other payments*** made as a condition of sale of the imported goods by the buyer to the seller/third party.

6.8.2 - Cost of transport and insurance - Rule 10(2)

The value of imported goods shall include –

a. The cost of transport, loading, unloading and handling charges associated with delivery to the place of importation [including ship demurrage charges on charted vessels, lighterage or barge charges]

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b. Cost of insurance to the place of importation.

"Place of importation" means the ***customs station, where the goods are brought for being cleared for home consumption*** or for being removed for deposit in a warehouse.

Cost of transport, loading, unloading, etc. is not ascertainable
Such cost shall be 20% of the FOB value

↓

FOB value not ascertainable but (FOB + insurance cost) is ascertainable
Cost of transport, loading, unloading etc., shall be 20% of (FOB + insurance cost)

↓

Insurance cost is not ascertainable
Such cost shall be 1.125% of FOB value

↓

FOB value not ascertainable but (FOB + transport cost is ascertainable
Insurance cost shall be 1.125% of (FOB + transport cost)

↓

Goods transported by air
Cost of transport, loading, unloading, etc., shall not exceed 20% of FOB value

Notes:

- In the case of goods imported by sea or air and ***transshipped to another customs station in India***, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.
- The ***cost of transport*** of the imported goods ***includes*** the ship ***demurrage charges*** on charted vessels, ***lighterage*** or ***barge charges***.

The value of imported goods shall not include the following charges or costs*, provided that they are distinguished from the price actually paid or payable –*

- ***Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation*** *on imported goods,*
- *The cost of* ***transport after importation,***
- ***Duties and taxes in India****. [Rule 13 – Interpretative Notes]*

6.9 - Rule 11 – Declaration by the Importer

The ***importer or his agent*** shall furnish –

a. a ***declaration*** disclosing full and accurate details relating to the value of imported goods; and
b. any ***other statement, information or document*** including an invoice of the manufacturer or producer of the imported goods.

6.10 - Rule 12 – Rejection of Declared Value

When the ***P.O. has reason to doubt the truth or accuracy of the value declared*** in relation to any imported goods, -

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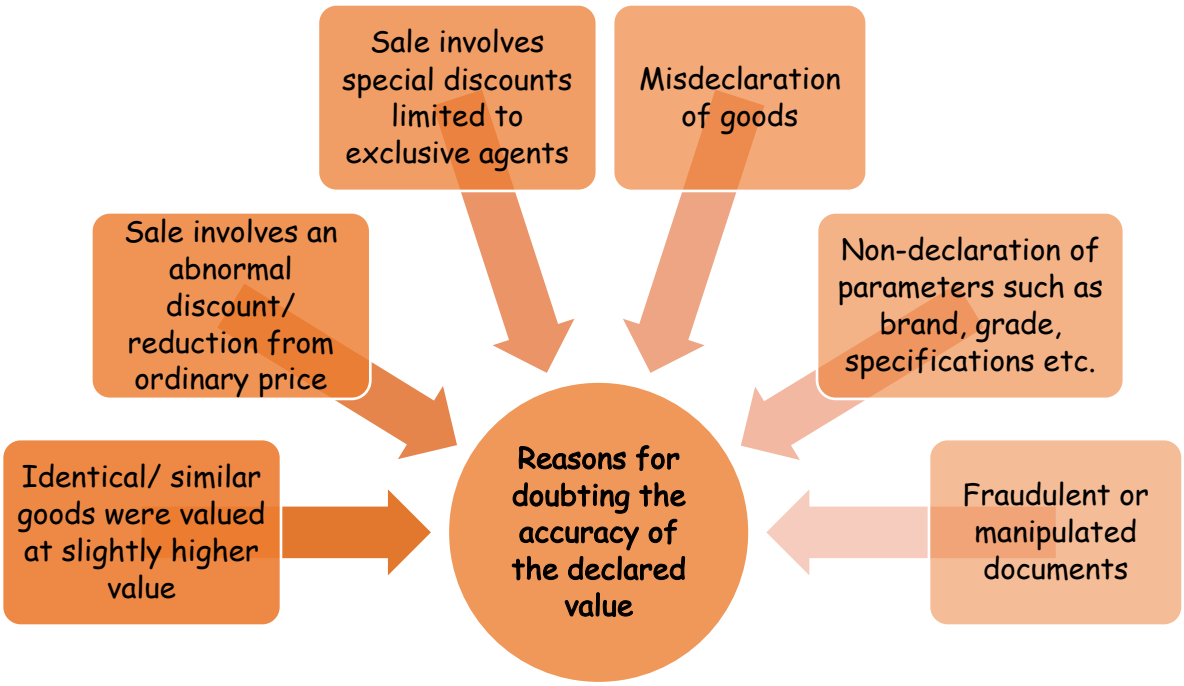
- He may ***ask the importer to furnish further information*** including documents or other evidence and
- ***If, after receiving such further information***, or in the absence of a response of such importer, ***the P.O. still has reasonable doubt*** about the truth or accuracy of the value so declared, ***it shall be deemed that the transaction value of such imported goods cannot be determined*** under rule 3(1).
- At the request of an importer, the P.O., shall ***intimate the importer in writing the grounds for doubting*** the truth or accuracy of the value declared ***before taking a final decision.***



7. CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

The Customs Valuation (Determination of Value of Export Goods) Rules, 2007 shall ***apply to the export goods.***

- Rule 3 - Determination of the Method of Valuation

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- Subject to rule 8, the value of export goods shall be the ***transaction value***. [Rule 3(1)]
- **Where buyer and seller are related –**
  The transaction value shall be accepted provided that the ***relationship has not influenced the price. [Rule 3(2)]***
- **Rule 3(1) and (2) not suitable for determining value –**
  The value shall be determined by ***proceeding sequentially through rules 4 to 6.*** [Rule 3(3)]

- Rule 4 - Determination of Export Value by Comparison

- The value of the export goods shall be based on the ***transaction value of goods of like kind and quality***
- ***exported at or about the same time*** to other buyers
- in the ***same destination country*** of importation ***or in its absence another destination country,***
- subject to ***adjustments*** based on the following considerations –
  a) differences in ***date of exportation,***
  b) difference in ***commercial levels and quantity levels,***
  c) difference in ***composition, quality and design,***
  d) difference in domestic ***freight and insurance charges.***

- Rule 5 - Computed Value Method

If the value cannot be determined under rule 4, it shall be based on a computed value, which ***shall include*** the following –

a) ***cost of production***, manufacture or processing of export goods,
b) ***charges***, if any, ***for the design or brand***,
c) an amount towards ***profit***.

7.4 - Rule 6 - Residual Method

Where the ***value of the export goods cannot be determined under the provisions of rules 4 and 5***, the value shall be determined using ***reasonable means consistent with the principles and general provisions of these rules.***

7.5 - Rule 7 - Declaration by the Exporter

The exporter shall furnish a declaration ***relating to the value of export goods*** in the manner specified in this behalf.

7.6 - Rule 8 - Rejection of Declared Value

Where the P.O. has reason to doubt the truth or accuracy of the value declared –

- He may ***ask the exporter to furnish further information*** including documents or other evidence.
- If, after receiving such further information, or in the absence of a response of such exporter, the ***P.O. still has reasonable doubt*** about the truth or accuracy of the value so declared, the ***transaction value shall be deemed to have not been determined in accordance with rule 3(1).***
- At the request of an exporter, the proper officer shall ***intimate the exporter in writing the ground for doubting*** the truth or accuracy of the value declared in relation to the export goods by such exporter and ***provide a reasonable opportunity of being heard***, before taking a final decision.

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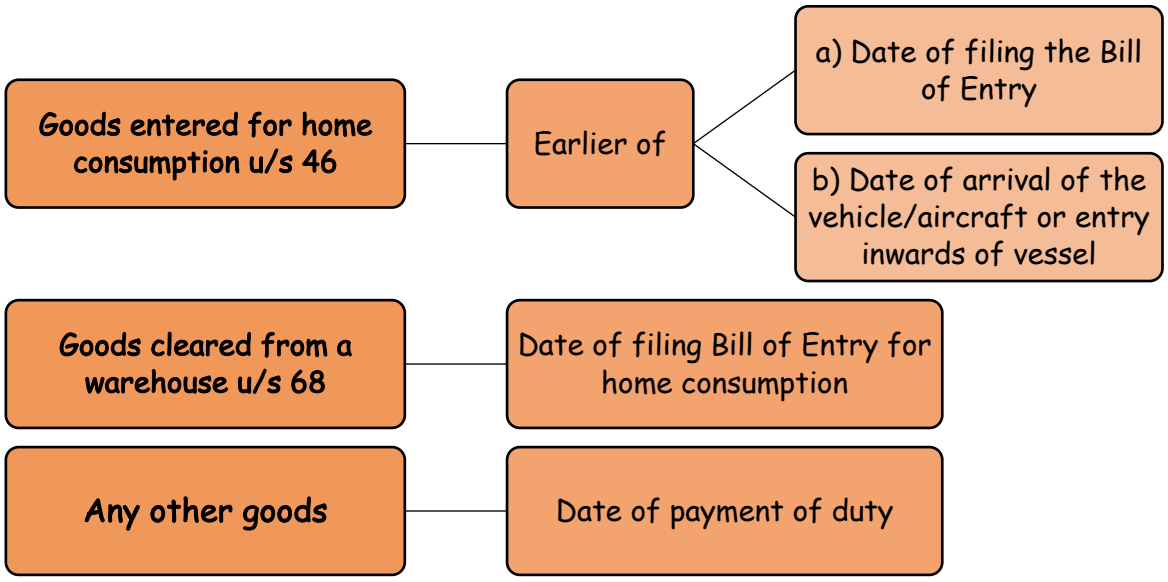
Reasons for the P.O. to doubt the accuracy of the declared value

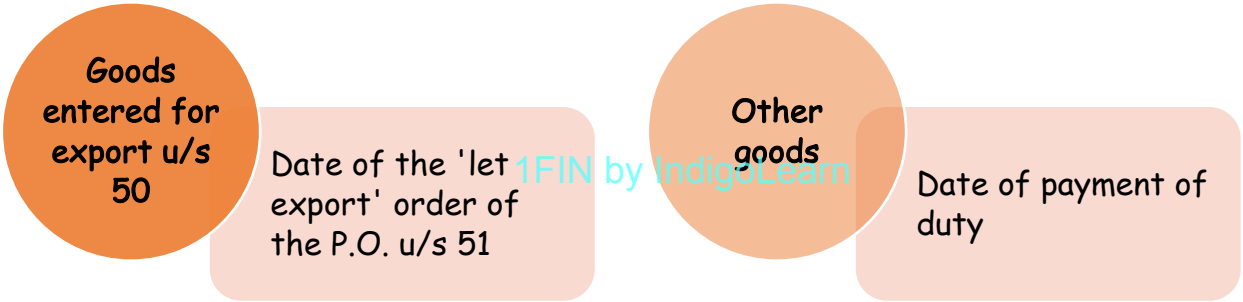
- Significant variation in the value at which goods of like kind and quality are exported at or about the same time in comparable quantities
- Significantly higher value compared to the market value of goods of like kind and quality
- Mis-declaration of parameters of the goods

8. DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUE

8.1 - For Imported Goods - Section 15



8.2 - For Export Goods - Section 16



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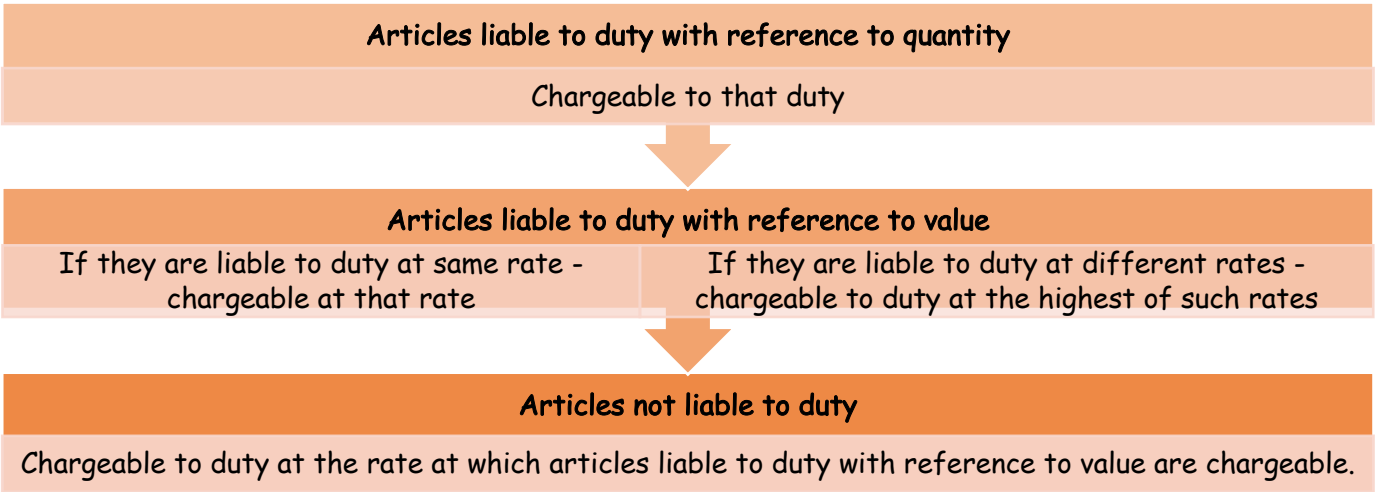
Note: The provisions of Section 16 shall not apply to baggage and imports by post.

9. SPECIAL PROVISIONS FOR CLASSIFICATION OF SETS OF ARTICLES AND ACCESSORIES - SECTION 19

Where goods consist of a set of articles, duty shall be calculated as follows –



Exceptions –

- ***Accessories of, and spare parts or maintenance and repairing implements*** for, any article which satisfy the conditions specified in the rules made in this behalf shall be ***chargeable at the same rate of duty as that article, if –***
    - The P.O. is satisfied that in the ordinary course of trade such accessories, parts and implements are ***compulsorily supplied along with the article***, and
    - ***No separate charge is made for such supply***, their price being included in the price of the main article.
- ***If the importer produces evidence*** to the satisfaction of the P.O. or the evidence is available ***regarding the value of any of the articles liable to different rates of duty,*** such article shall be ***chargeable to duty separately at the rate applicable to it.***

10. RELEVANT CASE LAWS

10.1 - CC Vs M/s Denso Kirloskar Industries Pvt Ltd

Facts – Technical information was provided by the Japanese company to the respondent for the manufacture of the contract products by the respondent, after the setting up of the plant.

Issue – Whether this consideration paid for technical know-how can be added to the assessable value?

Judgement – This cost is incurred after the importation of the goods and therefore cannot be loaded on to the assessable value of the imported goods.

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10.2 - Mangalore Refineries and Petrochemicals Ltd Vs CC (SC)

Judgement – Duty is payable on the quantity received in India, not the quantity exported from another country. If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. Similarly, the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. Thus, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

10.3 - Gira Enterprises v. CC (SC)

Facts – The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant. Therefore, Department valued such goods on the basis of transaction value of identical goods as per Rule 4 and demanded the differential duty along with penalty and interest from the appellant. However, Department did not provide these printouts to the appellant.

Issue – Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

Judgement –

- Mere existence of alleged computer printout was not proof of existence of comparable imports.
- Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable.

This case establishes the principle that **the onus to prove that identical goods have been imported at a price higher** than the value of the goods declared by the importer, **lies with the Department.**

10.4 - The Commissioner of Customs v. M/s Indo Rubber and Plastic Works (SC)

Facts – The assessee entered into distribution agreement with the Exporter for the purpose of import and sale of 'Li Ning' branded sports goods within India. Department alleged that marketing, advertising, sponsorship and promotional expenses/ payments made by the assessee to promote the 'Li Ning' brand was a condition of sale and consequently such amount was liable to be included in the value of the imported goods as per Rule 10(1).

Issue – Whether the marketing, advertising, sponsorship and promotional expenses/payments should be includible in assessable value of imported goods as per Rule 10(1)(e) of Customs Valuation Rules?

Judgement – The activity of advertisement and sales promotion was a post import activity incurred by the assessee on its own account and not for discharge for any obligation of the seller under the terms of sale. Hence, marketing, advertising, sponsorship and promotional expenses/payments made by the assessee for promotion of brand is not includible in assessable of imported goods and thus, Rule 10(1)(e) of the Customs Valuation Rule is not invokable.

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ILLUSTRATIONS

Illustration 1

Compute the total duty and integrated tax payable under the Customs Law on imported equipment based on the following information:

- Assessable value of the imported equipment US $ 10,100
- Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Excise and Customs is US $ 1 = 65.
- Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Excise and Customs is US $ 1 = 70.

Illustration 2

Compute export duty from the following data

- FOB price of goods: US $ 50,000.
- Shipping bill presented electronically on 26.04.20XX.
- Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 06.05.20XX.

Rate of exchange and rate of export duty are as under:

	Rate of Exchange	Rate of Export duty
26.04.20XX	1 US $ = 70	10%
06.05.20XX	1 US $ = 76	8%

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Rate of exchange is notified for export by CBIC

Illustration 3

Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Illustration 4

Jagat Corporation Limited imported some goods from US. The details of the transactions are as follows

Authority	Rate of Exchange
CBIC	1 US $ = Rs. 70
RBI	1 US $ = Rs. 71

- CIF value of the goods is $ 1,50,000
- Rate of basic custom duty is 10%
- Rate of Social welfare surcharge 10%
- Integrated tax leviable under section 3(7) of Customs Tariff Act, is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

Illustration 5

M/s Impex imported some consignment of goods on 01.6.20XX. A bill of entry for warehousing of goods was presented on 05.6.20XX and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 01.07.20XX, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entry for home consumption on 01.08.20XX claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse. Explain with reference to the provisions of the Customs Act, 1962:
the rate of duty applicable for clearance for home consumption in this case.

Illustration 6

A material was imported by air at

CIF price	5,000 US$
Freight paid	1,500 US$
Insurance cost	500 US$

- The banker realized the payment from importer at the exchange rate of Rs. 71 per dollar.
- Central Board of Indirect taxes and Customs notified the exchange rate as Rs. 70 per US$.
- Find the value of the material for the purpose of levying duty.

Illustration 7

ABC Industries Ltd. imports an equipment by air

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CIF price	6,000 US$
Freight paid	1,200 US$
Insurance cost	1,800 US$

- The banker realizes the payment from importer at the exchange rate of Rs. 61 per US$.
- Central Board of Indirect taxes and Customs notifies the exchange rate as Rs. 70 per US$ 58265 while rate of exchange notified by RBI is Rs. 72 per US$.
- ABC Industries Ltd. expends Rs. 56,000 in India for certain development activities with respect to the imported equipment.
- Basic customs duty is 10%, Integrated tax is leviable @ 12% and social welfare surcharge is 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law

Illustration (Questions)

Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder.

What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer pays the contract price?

Illustration (Questions)

'A' had imported goods from Finland. Due to deep draught at the port, such goods were not taken to the jetty in the port but were unloaded at the outer anchorage. The charges incurred for such unloading and transport of the goods from outer anchorage to the jetty in barges (small boats) were Rs. 1,35,000. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the addition of 1% of the CIF value of such goods, made under rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Discuss the tenability of 'A's' claim.

Illustration 8

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

Particulars	US $
Cost of the machine at the factory of the exporter	10,000
Transport charges from the factory of exporter to the port for shipment	500
Handling charges paid for loading the machine in the ship	50
Buying commission paid by the importer	50
Freight charges from exporting country to India	1,000
Exchange rate to be considered: 1$ = Rs. 70	
Actual insurance charges paid are not ascertainable	

Illustration 9

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Foreign Trade International Ltd. has imported one machine from England. It has given the following particulars:

Price of machine	8,000 UK Pounds
Freight paid (air)	2,500 UK Pounds
Design and development charges paid in UK	500 UK Pounds
Commission payable to local agent of exporter @ 2% of price of machine, in Indian Rupees	
Date of bill of entry	24.10.20XX (Rate of BCD 10%; Exchange rate as notified by CBIC Rs. 100 per UK Pound)
Date of arrival of aircraft	20.10.20XX (Rate of BCD 20%; Exchange rate as notified by CBIC Rs. 98 per UK Pound)
Integrated tax is 12%	
Insurance charges have been actually paid but details are not available.	

Compute the total customs duty and integrated tax payable by Foreign Trade International Ltd. Ignore GST compensation cess.

Illustration 10

From the following particulars, calculate total customs duty and integrated tax payable:

Date of presentation of bill of entry:	20.6.20XX [Rate of BCD 20%; Inter-bank exchange rate: Rs. 61.60 and rate notified by CBIC Rs. 70]
Date of arrival of aircraft in India:	30.6.20XX [Rate of BCD 10%; Inter-bank exchange rate: Rs. 61.80 and rate notified by CBIC Rs. 73.00]
Rate of Integrated tax	12%.
Ignore GST Compensation Cess	
CIF value 2,000 US Dollars	
Air freight	500 US Dollars
Insurance cost	100 US Dollars
Social Welfare Surcharge 10%	

Illustration 11

Mr. Backpack imported second-hand goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

Particulars	Contract Price	Changed Price	Negotiated Price
CIF Value	5000	5800	5500
Air Freight	300	600	500
Insurance	500	650	600

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Other details for computing assessable value and duty payable are tabled below:

Particulars	Amount
Vendor inspection charges (inspection carried out by foreign supplieron his own, not required under contract or for making the goodsready for shipment)	1600
Commission payable to local agent @ 1% of FOB in local currency	

Date of bill of entry	Basic customs duty	Exchange rate in ` (notified by CBIC)
18th February	10%	102
Date of arrival ofaircraft	Basic custom duty	Exchange rate in (notified by CBIC)
15th February	15%	98

Inter-bank rate 1 UK Pound = Rs.106

Compute the assessable value and calculate basic customs duty payable by Mr.Backpack.

Illustration 12

F. Ltd. imported a machine from UK in May, 20XX. The details in this regard are as under:

FOB value of the machine	10,000 UK Pound
Freight (Air)	3,000 UK Pound

Licence fee, the buyer was required to pay in UK	400 UK Pound
Buying commission paid in India	Rs. 20,000
Date of bill of entry	20.05.20XX The rate of exchange notified by CBIC on this date was Rs. 99.00 per one pound. Rate of BCD was 7.5%.
Date of arrival of aircraft	25.05.20XX The rate of exchange notified by CBIC on this date was Rs. 98.50 per pound Rate of BCD was 10%.
Integrated tax was 12% and ignore GST Compensation Cess.	
Insurance premium details were not available.	

You are required to compute the total customs duty and integrated tax payable on the importation of machine.
You may make suitable assumptions wherever required.

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Illustration 13

BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable

S.No.	*Particulars*	*Amount (UK pounds)*
a.	Price of the machine	10,000
b.	Freight (air)	3,000
c.	Engineering and design charges paid to a firm in U.K.	500
d.	License fee relating to imported goods payable by the buyer as a condition of sale	20% of price of machine
e.	Materials and components supplied in UK by the buyer free of cost valued at Rs. 20,000	
f.	Insurance paid to the insurer in India	Rs. 6,000
g.	Buying commission paid by the buyer to his agent in U.K.	100

Other particulars:

i. Inter-bank exchange rate: Rs. 98 per U.K. Pound.
ii. CBEC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of Rs. 100 per U.K. Pound.

iii. Importer paid Rs. 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

Illustration 14

Jagat Corporation Limited imported some goods from US. The details of the transactions are as follows

Authority	Rate of Exchange
CBIC	1 US $ = Rs. 70
RBI	1 US $ = Rs. 71

- CIF value of the goods is $ 1,50,000
- Rate of basic custom duty is 10%
- Rate of Social welfare surcharge 10%
- Integrated tax leviable under section 3(7) of Customs Tariff Act, is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

Illustration 15

ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US$, freight paid is 1,200 US$ and insurance cost is 1,800 US$. The banker realizes the payment from importer at the exchange rate of Rs. 61 per US$. Central Board of Excise and Customs notifies the exchange rate as Rs. 70 per US$ while rate of exchange notified by RBI is Rs. 72 per US$.

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ABC Industries Ltd. expends Rs. 56,000 in India for certain development activities with respect to the imported equipment.

Basic customs duty is 10%, Integrated tax u/s 3(7) of the Customs Tariff Act is leviable @ 12% and social welfare surcharge 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law.

Illustration 16

Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information

S.No.	*Particulars*	*Amount (US $)*
a.	Cost of the machine at the factory of the exporter	20,000
b.	Transport charges from the factory of exporter to the port for shipment	800
c.	Handling charges paid for loading the machine in the ship	50
d.	Freight charges from exporting country to India	5,000
e.	Buying commission paid by the importer	100
		Amount (Rs.)
f.	Lighterage charges paid by the importer at port of	12,000

	Importation	
g.	Freight incurred from port of entry to Inland Container depot	60,000
h.	Ship demurrage charges paid at port of importation	24,000

Illustration 17

Abhimanyu Enterprises, India imported a machine costing US $ 17,000 from George Corp., US through a vessel. Determine the assessable value of the said machine under the Customs Act, 1962 with the help of the additional information given below:

S.No.	*Particulars*	*Amount (US $)*
a.	Transport charges from the factory of George Corp to the port for shipment	850
b.	Freight charges from US to India	1,700
c.	Handling charges paid for loading the machine in the ship	85
d.	Buying commission paid by Abhimanyu Enterprises	85
e.	Exchange rate to be considered 1$ = Rs. 60	
f.	Actual insurance charges paid are not ascertainable	

Illustration 18

Determine assessable value under customs law of an imported machine based on the following information

S.No.	*Particulars*	*Amount (Rs.)*
a.	Cost of machine • Contract Price • Revised Price • Negotiated and agreed Price	 1,00,000 2,00,000 1,50,000
b.	Freight from the factory of the exporter to the port for shipment	20,000
c.	Freight incurred from port of entry to inland container depot	60,000
d.	Handling charges paid for loading the machine in the ship	5,000
e.	Demurrage charge paid at port	30,000
f.	Buying commission paid by importer	5,000
g.	Commission paid to local agent appointed by exporter	1,000
h.	Vendor inspection charges (not required under contract)	8,000

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Illustration 19

Niketan Industries Ltd., New Delhi has imported certain machine (by sea) from Japan.
From the following particulars furnished by it, work out the assessable value of the machine and customs duty payable by Niketan Industries Ltd with appropriate working notes:

S.No.	Particulars	Amount (Rs.)
a.	CIF value of the machine	4,23,379.69
b.	Freight incurred from port of entry to Inland Container depot	25,000
c.	Unloading and handling charges paid at the place of importation	40,000
d.	Designing charges paid to Consultancy firm in Mumbai	10,000

Basic Customs Duty leviable	10% advalorem

Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975	18%
35820 Note Ignore GST Compensation Cess	

Illustration 20

ABC Industries Ltd. of Mumbai Imported one machine through vessel from Japan, in the month of September 2018
The following particulars are made available:

S.No.	*Particulars*	*Amount (Japanese ¥)*
a.	Cost upto port of exportation incurred by exporter	6,00,000
b.	Loading charges at port of exportation	25,000
c.	Freight Charges from port of export to port of import in India	1,00,000

Following additional amount paid by ABC Industries Ltd. :

S.No.	*Particulars*	*Amount (Rs.)*
a.	Designing charges paid to Consultancy firm in New Delhi, which was necessary for such machine	8,00,000
b.	Commission paid (not buying commission) to local agent of exporter	1,25,000
c.	Actual Landing charges paid at the place of importation	15,000
d.	Actual insurance charges paid to the place of importation are not ascertainable	-
e.	Lighterage charges paid at port of importation	20,000

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Illustration 21

Mr.X imported certain goods from a related person Mr.Q of US and transaction value has been rejected. Rules 4 and 5 of the import valuation rules are found inapplicable, as no similar / identical goods are imported in India. Mr.X furnishes cost related data of imports and requests Customs Authorities to determine value accordingly as per Rule 8. The relevant data are

1. Cost of material incurred by Mr.Q $2,000
2. Fabrication charges incurred by Mr.Q $1,000
3. Other chargeable expenses incurred by Mr.Q $400
4. Other indirect costs incurred by Mr.Q $250
5. Freight from Mr.Q's factory to US port $250
6. Loading charges at US port $100
7. Normal net profit margin of Mr.Q is 20% of FOB
8. Air freight from US port to Indian port $1,500
9. Insurance from US port to Indian port $50
10. Exchange rate 70 per $

The Customs Authorities are of the opinion that since value as per Rule 7 can be determined at Rs.4,00,000, there is no need to apply Rule 8.

Can the request of Mr.X be legally acceptable? If so compute the Assessable value under the Customs Act, 1962.

Illustration 22

An importer entered into a contract for supply of crude sunflower seed oil @

U.S. $ 435 C.I.F./Metric ton.

Under the contract, the consignment was to be shipped in the month of July. The period was extended by mutual agreement and goods were shipped on 5th August at old prices.

In the meanwhile, the international prices had gone up due to volatility in market and other imports during the month of August were at higher prices. Department sought to increase the assessable value on the basis of the higher prices of contemporaneous imports.

Decide whether the contention of the Department is correct, with reference toa decided case law, if any.

Illustration 23

Kaveri Enterprises imported some goods from Italy. On the basis of certaininformation obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goodson the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

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Kaveri Enterprises contended that Department's demand was without any basisin law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.
You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any.

Illustration 24

M/s Impex imported some consignment of goods on 1st June. A bill of entry for warehousing of goods was presented on 5th June and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 1st July, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entryfor home consumption on 1st August claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse.

Explain with reference to the provisions of the Customs Act, 1962:

1. the rate of duty applicable for clearance for home consumption in this case.
2. whether the rate of exchange on 1st August could be adopted for purposeof conversion of foreign currency into local currency?

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5. IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

Contents

- Understand the import and export procedures.
- Duties and obligations of the Person-in-charge of a conveyance.
- Assessment of duty.
- Faceless Assessment
- Transit vs. Transhipment

1. SOME IMPORTATNT DEFINITIONS

1.1 - Goods [Section 2(22)]

"Goods" ***includes***

a. vessels, aircrafts and vehicles
b. stores
c. baggage
d. currency and negotiable instruments and
e. any other kind of movable property.

1.2 - Vehicle [Section 2(42)]

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- ***Conveyance*** of any kind ***used on land*** and ***includes a railway vehicle.***

1.3 - Stores [Section 2(38)]

- ***Goods for use in a vessel or aircraft*** and
- ***Includes fuel and spare parts and other articles of equipment***, whether or not for immediate fitting.

1.4 - Baggage [Section 2(3)]

- Baggage ***includes unaccompanied baggage*** but ***does not include motor vehicles.***

1.5 - Exporter [Section 2(20)]

"Exporter", in relation to any goods at any time between their entry for export and the time when they are exported, ***includes***

- any ***owner***,
- ***beneficial owner*** or
- any ***person holding himself out to be the exporter.***

1.6 - Importer [Section 2(26)]

"Importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, ***includes***

- any ***owner***,
- ***beneficial owner*** or
- any ***person holding himself out to be the importer.***

Importer also includes any person ***holding himself to be the importer for purpose of clearance of goods.*** This is the ***person who files the import documents.***

Case Law: Union of India v Sampath Raj Dugar, 1991 (Bom. HC)
Judgement: *Between the owner and any person holding himself out to be the owner, the owner takes precedence.*

Case Law: Agrim Sampada Ltd v Union of India, 2004 (Del.HC)
Judgement: *The* ***goods being abandoned by original importer****, ownership thereof continues to vest in foreign supplier. The said goods* ***if transferred by endorsement of Bill of Lading to another person,*** *that another person holding document of title (Bill of Lading)* ***to be regarded as 'importer'*** *under Section 2(26) of the Customs Act, 1962.*

1.7 - Beneficial owner - Section 2(3A)

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Any person –

i. ***on whose behalf the goods are being imported or exported, OR***
ii. ***who exercises effective control*** over the goods being imported or exported

1.8 - Person-in-charge - Section 2(31)

Vessel	Master of the vessel
Aircraft	Commander/ Pilot-in-charge of the aircraft
Railway train	Conductor/ guard/ other person having chief direction of the train
Other conveyance	Driver/ other person-in charge of the conveyance

2. PROCEDURES FOR LOADING AND UNLOADING OF IMPORTED GOODS

2.1 - Arrival of Vessels and Aircrafts in India - Section 29

2.1.1 - Calling or landing at Customs port or Customs airport only

- The ***person-in-charge of a vessel or an aircraft entering India*** from any place outside India ***shall not cause or permit the vessel or aircraft to call or land –***
    - ***for the first time after arrival*** in India, ***or***
    - ***at any time while it is carrying passengers or cargo*** brought in that vessel or aircraft,

  at any place other than a customs port or a customs airport, as the case may be,
- ***unless permitted by the Central Board of Indirect taxes and Customs*** (i.e., CBIC or the Board).

2.1.2 - Consequences of contravention

Any contravention of this provision will ***operate as a presumption*** against the person-in-charge of conveyance or beneficial owner to have an ***intention to illegally import goods into India.***

2.1.3 - Calling or landing at another place

- The vessel or aircraft, which is ***compelled by accident, stress of weather, or other unavoidable cause*** may call or land at a place other than the customs port or customs airport.
- In this case, the person-in-charge shall have the following obligations –
    i. ***Report the arrival/ landing*** to the nearest customs officer/ officer in charge of police station and produce the log book if demanded.
    ii. Should ***not allow any loading/ unloading*** of any goods without permission, and should not allow the passenger or crew to leave the immediate vicinity of the vessel/ aircraft.
    iii. However, the goods can be removed, or the passengers and crews can be allowed to depart if the same is necessary for reason of health, safety or preservation of life or property.
    iv. ***Comply with all the directions*** given by such officers w.r.t. any such goods.

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2.2 - Delivery of Arrival Manifest or Import Manifest or Import Report - Section 30

The ***person-in-charge*** of a vessel, or an aircraft, or a vehicle, carrying imported goods ***or any other person*** as may be specified by the CG, by notification in the Official Gazette, in this behalf shall, ***deliver the arrival manifest or import manifest or import report*** to the P.O. ***within the time limit prescribed,*** in the ***form prescribed.***

2.2.1 - Arrival manifest or Import manifest or Import report [Section 2(24)]

Arrival manifest or Import manifest or Import report means ***the report required to be delivered under section 30.***

- It is a ***detailed information*** to the customs ***about goods in the vessels/ aircrafts*** which have been brought in at any port/ airport for unloading at that particular port/international airport as also that which would be carried further for other ports/airports.
- The prescribed form for making such declaration is the ***Import General Manifest (or IGM).***

- ***Import report (IR)*** is required only when ***goods are imported via land route.***

2.2.2 - Time limit for delivery of IGM/IR

Imported goods brought in	Import Document	Time limit for presentation	Mode of presentation
A vessel	Arrival manifest or import manifest	Any time prior to the arrival of the vessel	Electronic filing. Where it is not feasible to deliver the document electronically, the Principal Commissioner/ Commissioner may allow the same to be delivered in any other manner.
An aircraft	Arrival manifest or import manifest	Any time prior to the arrival of the aircraft	
A vehicle	Import Report	Within 12 hours after its arrival in the customs station	Manual filing

2.2.3 - Delay in filing the IGM/IR

If the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the P.O. within the specified time and if the P.O. is satisfied that there was no sufficient cause for such delay, the ***person-in-charge would be liable to a penalty up to ₹ 50,000/-.***

2.2.4 - Belated filing of IGM/IR

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Arrival manifest or import manifest or import report filed belatedly may also be ***accepted by the P.O. on valid justified grounds.***

2.2.5 - Amendment to IGM/IR

- If the P.O. is satisfied that the IGM/IR is in any way ***incorrect/ incomplete*** and there is ***no fraudulent intention***, he may ***permit it to be amended or supplemented.***
- ***Subsequent amendment of IGM/IR shall not be treated as late filing.***

2.3 - Passenger and Crew Arrival Manifest and Passenger Name Record Information - Section 30A

2.3.1 - Time limit for filing

The ***person-in-charge of a conveyance*** that enters India from any place outside India ***or any other person as may be specified***, shall deliver to the P.O. –

- The ***passenger and crew arrival manifest,***
  - In the case of an ***aircraft or a vessel – Before arrival***
  - In case of a ***vehicle – Upon arrival.***
- The ***passenger name record information*** of arriving passengers.

Passenger name record information [Section 2(30B)] –
*The **records prepared by an operator** of any aircraft or vessel or vehicle or his authorized agent **for each journey booked by or on behalf of any passenger.***

2.3.2 - Delay in filing the Passenger and Crew Arrival Manifest and Passenger Name Record Information

The person-in-charge or the other specified person shall be liable to such ***penalty, not exceeding ₹ 50,000/-,*** as may be prescribed, if the P.O. is satisfied that there was no sufficient cause for such delay.

2.4 - Imported Goods not to be unloaded from vessel until Entry Inwards Granted - Section 31

- The master of a vessel ***shall not permit the unloading of any goods until*** an order has been given by the ***P.O. granting 'Entry Inwards'*** to such vessels.
- ***Entry Inwards shall not be given until the arrival manifest or import manifest has been delivered*** or the P.O. is satisfied that a valid reason is given for not delivering it within prescribed time.
- Application for entry inward has to be submitted along with the IGM.
- This is ***applicable only for vessels*** and not for aircrafts or vehicles.
- ***Exceptions*** – This section shall not be applicable to the ***unloading of –***
    - ***Baggage*** accompanying a passenger/ crew member,
    - ***Mail bags,***
    - ***Animals,***
    - ***Perishable goods and***
    - ***Hazardous items.***

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Case Law: Bharat Surfactants Pvt Ltd v Union of India, 1989 (SC), SRS Engineering Industries v Secretary, Ministry of Finance 2009 (Del. HC).

Judgement: *Grant of Entry Inwards is an acknowledgement of the fact that Customs Department is ready to supervise the unloading of the cargo, and is prepared to assess the goods to duty. It is not given if –*

a) there is no berth for the ship to dock [Bharat Surfactants Pvt Ltd (SC)],

OR

b) customs supervision is not possible for other reasons [SRS Engineering Industries (Del)].

2.5 - Imported Goods not to be unloaded unless mentioned in Arrival Manifest or Import Manifest or Import Report - Section 32

- Without the permission of the P.O., the imported goods cannot be unloaded, unless they are ***mentioned in the IGM for being unloaded in that customs station.***

2.6 - Loading and Unloading of Goods at approved places only - Section 33

- Loading and unloading of goods are to be undertaken only at ***places approved under section 8(a) of the Customs Act, 1962.***
- Section 8(a) provides proper places in any customs port, customs airport, or coastal port for loading and unloading of goods.

2.7 - Goods not to be loaded or unloaded except under the Supervision of Customs Officer - Section 34

- Loading and unloading should be done under the ***supervision of the P.O.***
- ***Exceptions –***
    - In some cases, the ***Board may give general permission for any goods to be loaded or unloaded without such supervision.***
    - Also, the ***P.O. may, in any particular case, give special permission*** for any goods to be loaded or unloaded without such supervision.

2.8 - Restrictions on Goods being water-borne - Section 35

- In certain circumstances ***where the vessel cannot be berthed (i.e., accommodated) at the port, the cargo is ferried from or to the ships anchored at mid-sea to the port in boats.***
- In such case, the boat should be ***accompanied by a 'Boat note'.***
- ***No imported goods shall be water borne for being loaded*** in any vessel, and ***no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped*** unless the goods are accompanied by a boat note in the prescribed form.
- **Exceptions –**
    - In some cases the ***Board may give general permission*** for any goods/ class thereof to be water borne without being accompanied by a boat-note.
    - Also, the ***P.O. may, in any particular case, give special permission*** for any goods/class thereof to be water borne without being accompanied by a boat-note.

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2.9 - Further controls on the conveyance and loading and unloading of goods

Section 36	Section 37	Section 38
• Goods cannot be loaded or unloaded on Sundays or other holidays observed by the Customs Dept., or after the working hours. • Exception - If prescribed notic and fee are paid.	• The P.O. may, at any time, board any conveyance carrying imported goods or export goods and may remain there for such period as he considers necessary.	• The P.O. may require the person in charge of any conveyance to produce such documents/ answer any questions and such person shall be bound to reply.

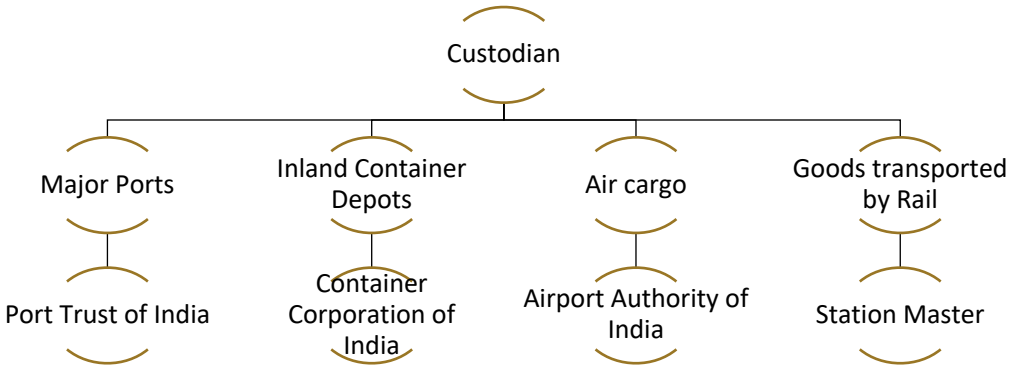
3. PROCEDURE FOR CLEARANCE OF IMPORTED GOODS

The procedures for clearance of imported goods are contained in ***Section 45 to Section 49*** of the Customs Act. These procedures are ***not applicable to –***

- ***baggage*** and
- ***goods imported or to be exported by post.***

3.1 - Restrictions on Custody and Removal of Imported Goods - Section 45

- Until the imported goods are cleared for home consumption or are warehoused or are exported for transhipment, they shall ***remain in the custody of such person as may be approved by the Principal Commissioner/Commissioner of Customs*** (Principal CCus./ CCus.). This person is called the ***custodian***.



3.1.1 - Responsibility of Custodian of goods - Section 45(2)

The responsibility of the custodian commences in respect of imported goods the moment the ship is berthed in the harbour or the goods are ready for unloading from the aircraft. During this time, they have the following responsibilities –

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a. ***Maintain a proper record*** of goods received from the carriers and send a copy of the record to the P.O.
b. ***Not to permit goods to be removed from the customs area*** or allow them to be dealt with otherwise except under the specific permission of the Customs Authorities.

In pursuance to this responsibility, the custodian is required to tally the particulars of the goods landed by a vessel, and send a report known as out turn statement to the customs authorities

3.1.2 - Liability of the Custodians - Section 45(3)

If any goods are pilfered after unloading in any customs area, (while in the custody of custodian) such ***custodian shall be liable to pay duty*** on such goods.

The duty shall be paid at the ***rate prevailing on the day of delivery of the IGM/ IR*** to the P.O. u/s 30.

3.2 - Filing of Import Bill of Entry - Section 46

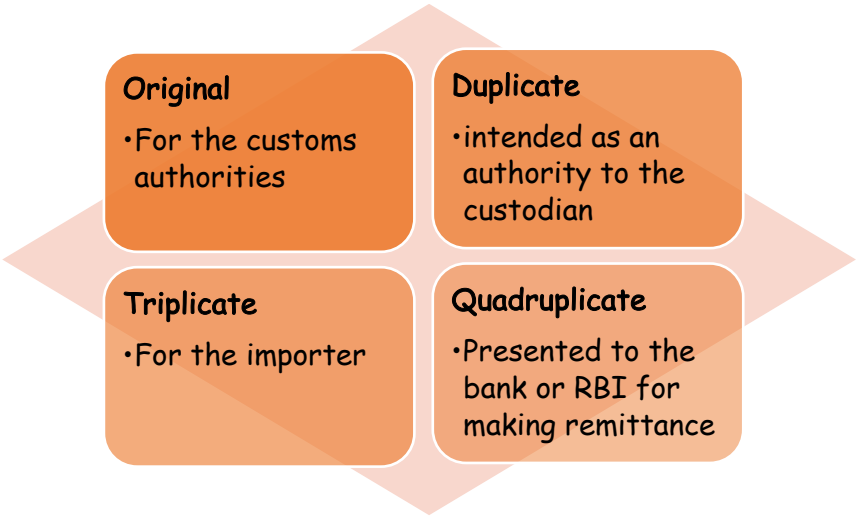
"Bill of entry" means a bill of entry referred to in section 46, to be filed when goods are imported by sea or air [Section 2(4)].

It is a document of assessment and when assessed becomes an assessment order.

3.2.1 - E-filing of bill of entry

It is the duty of the ***importer*** of any goods to ***make an application electronically*** on the ***customs automated system*** to the P.O. for clearance of the goods.

When Bill of Entry is filed electronically, it is in ***four copies*** –



3.2.2 - Manual submission of Bill of Entry

Where it is not feasible to make entry by presenting electronically on the customs automated system, the Principal CCus./ CCus. may allow entry to be presented manually in prescribed form and manner.

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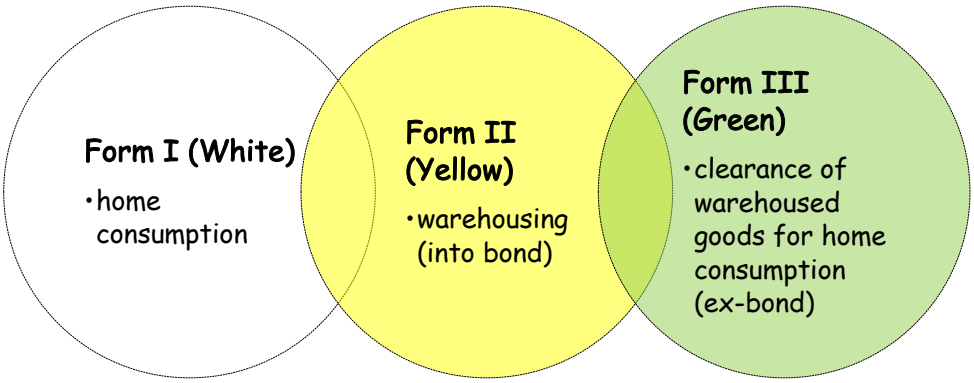
3.2.3 - Types of Bills of Entries



3.2.4 - Declaration in the Bill of entry

Amongst other things –

- Particulars of packages,
- Description of goods,
- Correct value of the goods.

The importer who presents a bill of entry shall ensure the following –

a. the ***accuracy and completeness*** of the information given therein,
b. the ***authenticity and validity of any document*** supporting it, and

c. ***compliance with the restriction or prohibition, if any, relating to the goods*** under this Act or under any other law for the time being in force.

3.2.5 - Importer unable to furnish details

If for any reason the importer is unable to furnish these details, he may –

a. ***Request the customs officials to examine the goods in his presence*** to enable him to ascertain the necessary details for making a proper declaration in the bill of entry, ***OR***
b. ***Seek permission to deposit the goods in a public bonded warehouse*** appointed u/s 57 pending receipt of the necessary information and the supporting documents u/s 49. This is called ***warehousing without warehousing.***

   Note: *Such goods shall not be deemed to be warehoused goods for the purpose of the Act and accordingly warehousing provisions shall not apply to such goods.*

3.2.6 - Time limit for filing - Section 46(3)

- ***Before the end of the day (including holidays) preceding the day*** on which the **aircraft/vessel/vehicle carrying the goods arrives at a customs station** at which such goods are to be cleared for home consumption or warehousing.
- *The **Board may**, in such cases as it may deem fit, **prescribe different time limits** for presentation of the bill of entry, which shall **not be later than the end of the day of such arrival.***
- **Advance filing** – A bill of entry may be presented at **any time not exceeding 30 days prior to the expected arrival** of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.
- Where the bill of entry is **not presented within the time so specified** and the P.O. is satisfied that there was **no sufficient cause for such delay**, the importer shall **pay prescribed charges** for late presentation of the bill of entry.

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3.3 - Assessment of Goods - Section 17

3.3.1 - Self-assessment

- An ***importer/ exporter*** shall self-assess the duty, if any, leviable on such imported/ export goods.
- ***Exception*** – Section 85 provides stores which are allowed to be warehoused without the assessment of duty.

3.3.1 - Verification by P.O.

- The ***P.O. may verify the self-assessment*** made by assessee and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
- For this purpose the ***P.O. may require the importer, exporter or any other person to produce any document or information***, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained

- ***Green channel clearance facility*** – Some major importers have been given the green channel clearance facility. It means ***clearance of goods is done without routine examination of the goods.***
    i. They have to ***make a declaration*** in the declaration form at the time of filing of bill of entry.
    ii. However, in rare cases, ***if there are specific doubts regarding description or quantity of the goods, physical examination may be ordered*** by the senior officers/investigation wing like Special Intelligence and Investigation Branch (SIIB).

3.3.2 - Re-assessment of duty by P.O.

- If it is found that ***self-assessment is not done properly,*** the P.O. may re-assess the duty leviable on such goods.

3.3.3 - Speaking order for re-assessment

Where –

- the ***re-assessment is contrary to the self-assessment*** done by the importer/ exporter, ***AND***
- the ***importer/ exporter does not confirm his acceptance of the said re-assessment in writing***,

the ***P.O. shall pass a speaking order on the re-assessment, within 15 days*** from the date of re-assessment.

3.4 - Provisional Assessment of Duty - Section 18

3.4.1 - Circumstances where provisional assessment can be made

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- Importer/exporter is unable to make self-assessment and makes a written request to P.O.
- P.O. deems it necessary to subject any imported/ export goods to any chemical or other test.
- P.O. deems it necessary to make further enquiry even after the importer/exporter produces all necessary information or documents.
- Necessary documents or information has not been produced and P.O. deems it necessary to make further enquiry.

In any of the above cases, the P.O. may direct provisional assessment of duty if the ***importer/ exporter, furnishes such security as the P.O. deems fit for the payment of the deficiency***, if any, between the duty as may be finally assessed or re-assessed and the duty provisionally assessed.

Wherever, duty is to be assessed provisionally, the importer shall –

- ***execute a bond*** *for the purposes of undertaking to pay on demand the deficiency in duty,* ***and***
- ***furnish prescribed amount of security*** *for the payment of the duty deficiency. No sureties shall be obtained. The security to be obtained shall be* ***in the form of a bank guarantee or a cash deposit****.*

3.4.2 - Submission of additional information for final assessment

Where any document/ information is required by the P.O. for final assessment, the importer/ exporter shall submit it ***within prescribed time,*** and the P.O. shall finalise the provisional assessment within prescribed time and in prescribed manner.

3.4.3 - Effect of final assessment

Goods cleared for home consumption/ exportation	Warehoused goods
•The amount paid shall be adjusted against the duty finally assessed/ re-assessed. •If the amount falls short of the duty provisionally assessed, deficiency shall be paid. •If the amount is in excess of the duty provisionally assessed, the importer/exporter shall be entitled to refund.	•If duty finally assessed/ re-assessed is in excess of the duty provisonally assessed, the P.O. shall require the importer to execute a bond, binding himself in a sum equal to twice the amount of excess duty.

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3.4.4 - Interest on demand amount

- The ***importer/ exporter shall be liable to pay interest***, on any amount payable to the CG, ***consequent to the final assessment*** order or re-assessment order.
- The interest shall be paid at the ***rate fixed by the CG u/s 28AA from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.***

3.4.5 - Interest on refund

If refundable amount is ***not refunded within 3 months*** from the date of assessment of duty, interest shall be paid on such unrefunded amount at such ***rate as fixed by CG u/s 27A.***

The refund of duty and interest thereon is subject to the principle of unjust enrichment and shall be paid only if such amount is relatable to –

a) the duty and interest, if any, paid on such duty paid by the importer/ exporter if he had ***not passed on the incidence of such duty and interest,*** if any, paid on such duty ***to any other person,***

b) the duty and interest, if any, paid on such ***duty on imports made by an individual for his personal use,***

c) the duty and interest, if any, paid on such ***duty borne by the buyer, if he had not passed on the incidence*** of such duty and interest, if any, paid on such duty to any other person,

d) the ***export duty*** as specified ***u/s 26,***

e) ***drawback of duty*** payable u/s 74 and 75.

In all other cases, the amount of such refund and interest shall be credited to the Consumer Welfare Fund.

3.4.6 - Customs (Finalisation of Provisional Assessment) Regulations

A) Time-limit and manner for submission of documents or information by importer/ exporter for the purpose of finalisation of provisional assessment

i) Where the provisional assessment is made on the ground that, either

- The necessary documents/ information have not been produced, or
- The P.O. requires additional information or documents,

The P.O. shall, within **15 days** from the date of such provisional assessment, inform the importer/exporter in writing the specific details of the information to be furnished or documents to be produced.

ii) Where any document or information is sought by the P.O., such information or documents shall be made available within **2 months** from the date of requisition by the P.O.

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iii) The P.O. may, for reasons to be recorded in writing, allow a further period **not exceeding 2 months**, either on his own motion or at the request of the importer/exporter, if documents/information are not made available within the said 2 months.

iv) An officer to whom the P.O. is subordinate may allow an additional time period, as deemed fit, for reasons recorded in writing, on request of the importer/exporter regarding inability to furnish documents/information.

However, no extension shall be granted beyond 14 months from the date of provisional assessment.

v) On submission of all documents or information, the importer/exporter or his authorised representative or Customs Broker shall inform the P.O. in writing that all required documents/information have been furnished.

vi) Where documents or information are not made available within the time allowed and no further extension is granted, the P.O. shall proceed to finalise the provisional assessment on the basis of documents or information available on record.

B) Time-limit for finalisation of provisional assessment

The P.O. will finalise the provisional assessment ***within 3 months of receipt of:***

a) Receipt of documents or information from the importer/exporter or expiry of the time allowed for submission; or

b) Conclusion of enquiry/investigation/verification, where provisional assessment was ordered for that reason.

If the P.O. is unable to finalise within 3 months, an officer to whom the P.O. is subordinate may allow a further period of 2 months at a time, for reasons recorded in writing.

In any case, the assessment shall be finalised within **2 years from the date of provisional assessment** under section 18(1) of the Act.

For provisional assessments pending as on **29th March, 2025**, the period of 2 years shall be reckoned from such date.

Where finalisation is delayed due to any of the following reasons:

- Information being sought from an authority outside India through legal process
- Appeal in similar matter pending before Appellate Tribunal/High Court/Supreme Court
- Interim stay order issued by Appellate Tribunal/High Court/Supreme Court
- Specific direction/order of the Board to keep matter pending
- Pending application before Settlement Commission or Interim Board

The P.O. shall inform the importer/exporter of the reasons for non-finalisation. In such cases, the period of **2 years** shall be computed from the date when such reason ceases to exist.

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C) Manner of finalisation of provisional assessment

i) The provisional assessment will be finalised as per the ***provisions of section 18*** of the Act.

ii) Where the final assessment is contrary to the provisional assessment, the P.O. shall pass a speaking order following principles of natural justice.

iii) Where the final assessment confirms the provisional assessment, the P.O. shall finalise the same after ascertaining acceptance from the importer/exporter on record and inform them in writing of the date of such finalisation.

iv) Where the importer/exporter is required to pay any deficiency after adjustment of the amount already paid, the Bill of Entry or Shipping Bill may be returned for payment of such amount.

The importer/exporter shall also be liable to pay interest on such deficiency amount as provided under section 18(2) of the Act.

v) Where a Bill of Entry or Shipping Bill is presented electronically and ordered to be provisionally assessed, the P.O. shall finalise the provisional assessment on the system accordingly.

vi) Bond executed at the time of provisional assessment shall be cancelled after finalisation.

D) *Penalty*

If any importer/ exporter or his authorised representative or Customs Broker ***contravenes any provision of these regulations*** or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a ***penalty which may extend to ₹ 50,000.***

*The Customs Audit Regulations, 2018 defines '**auditee**' to mean –*

- *"a person who is subject to an audit u/s 99A of the Act, and*
- *includes an importer/ exporter or custodian approved u/s 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods".*

Auditee to preserve the records for conduct of this audit for years

↓

Risk Based Assessment will identify the persons to be audited

↓

Audit will be conduted in the premises of the auditee by the authorised officers who will intimate 15 days in advance of their scheduled visit.

↓

Based on the findings, the auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty.

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Assistance of experts like CA/ CWA/ IT professionals can be availed for conducting the audit.

↓

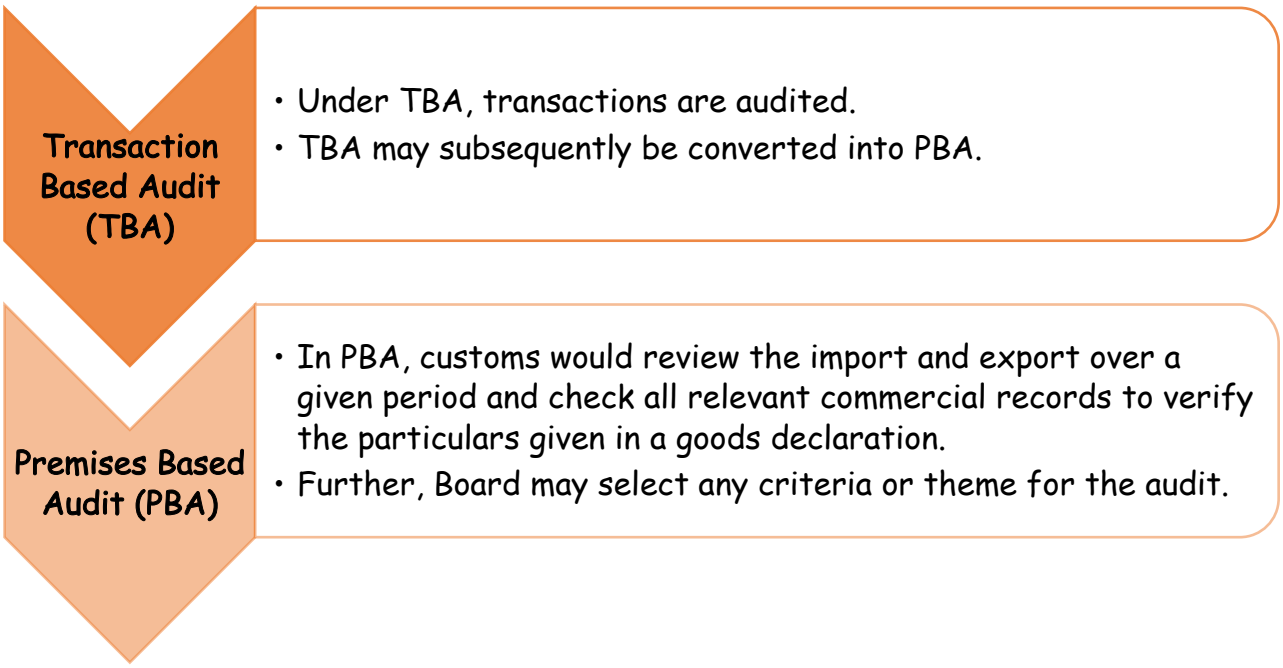
Contarvention attracts penalty of Rs. 50,000/-

3.4.7 – Voluntary Revision of Entry Post Clearance - Section 18A

a. **Option to Revise:** After the goods have been cleared, an importer or exporter can change (revise) the details they had already files (called "Entry") about those goods. This revision must be done in the Prescribed form, manner and Time and subject to certain conditions.
b. **Self-Assessment:** When revising the entry, the importer or exporter must recalculate (self-assess) the duty payable on the goods
c. **Impact of Revision:** If the revised entry shows that less duty was overpaid/underpaid, it will be treated as a refund claim under Section 27
d. **Verification of Re-assessment by P.O. :** the P.O. may –
    a. Verify the revised entry and self-assessment in cases selected primarily based on risk evaluation through appropriate selection criteria
    b. Re-assess the duty if the self-assessment is found incorrect
e. **Cases where revision is not allowed:** Revision of entry is not allowed in the following cases:
    - An audit/ Search/ Seizure/ Summons action has already been initiated and the importer or exporter has been intimated

- Cases requiring refund where P.O. has re-assessed the duty u/s 17 or assessed the duty u/s 18 or u/s 84

3.5.1 - Types of Audit



3.5.2 - Conduct of Customs Audit

- ***Directorate General of Analysis and Risk Management*** has been entrusted the ***responsibility of identifying the potential focus areas and entities*** for various types of audit.
- The ***executive Customs Commissionerates shall also assist*** Audit Commissionerates in the conduct of the audit.
- Apart from overall supervision, ***Chief Commissioner shall examine on a selective basis, 5% of the audit reports***, selected randomly based on the quarterly reports submitted by Audit Commissionerates ***to ensure that audit has been conducted as per prescribed procedures.***

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3.6 - Clearance of Goods - Section 47

Once the customs check and payment of duty is completed, the customs officers allow clearance of the goods.

3.6.1 - Order permitting clearance of goods

- ***The P.O. shall make an order*** permitting clearance of goods for home consumption when –
  - He is ***satisfied that such goods are not prohibited, and***
  - The appropriate ***import duty and charges payable thereon has been paid.***
- The order may also be ***made electronically through customs automated system.***
- On making clearance order, which is popularly known as "***pass out of customs charge order"*** the ***bill of entry (duplicate) copy is produced to the custodian*** who delivers the goods to the importer.

3.6.2 - Deferred payment of import duty

The CG may permit ***the following class of importers to make deferred payment of duty/ charges*** in such manner as provided by the rules –

Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three)	Authorised Public Undertaking
• AEO means the Authorised Economic Operator approved by the Directorate of International Customs under CBIC	• means the Authorised Public Undertaking approved by the Directorate of International Customs under CBIC

An ***eligible importer*** who intends to avail the benefit of deferred payment shall ***intimate to the Principal CCus./CCus., having jurisdiction over the port of clearance, his intention to avail the said benefit.***

The Principal CCus./CCus. shall on being satisfied with the eligibility of the importer, allow him to pay the duty on deferred basis.

3.6.3 - Time limit for payment of import duty

In case of self -assessment	• On the date of presentation of Bill of entry
In case of assessment, re-assessment or provisional assessment	• Within one day from the date on which the bill of entry is retrned to him by the P.O. for payment of duty
In case of deferred payment	• From such date as may be specified by the rules

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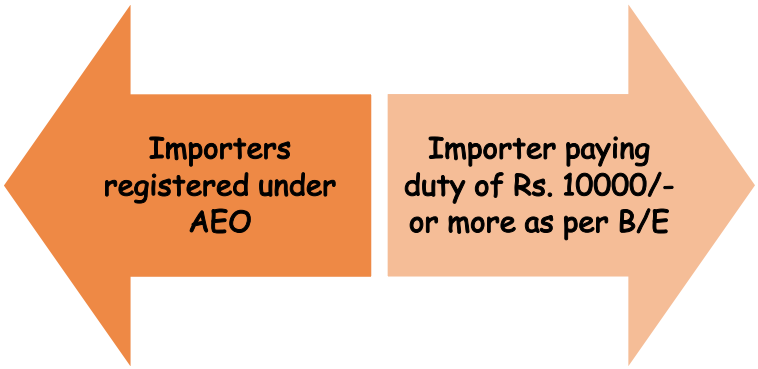
Due dates for deferred payment of import duty –

Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays)
• 1st day to 15th day of any month	16th day of that month
• 16th day till the end of last day of any month other than March	1st day of the following month
• 16th day till 31st day of March	31st March

- ***The eligible importer shall pay the duty electronically.*** However, the AC/DC of Customs may for reasons to be recorded in writing, allow payment of duty by any other mode.
- If there is ***default in payment of duty by due date more than once in 3 consecutive months***, this facility of ***deferred payment will not be allowed*** unless the duty with interest has been paid in full.

- Also, the facility of deferred payment will ***not be available in respect of the goods which have not been assessed or not declared*** by the importer in the entry.

3.6.4 - Mandatory Electronic Payment of Duty



- The Board has set up a ***dedicated payment gateway*** called, '***ICEGATE***' through which the payments are to be made.
- The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

4. INTRODUCTION OF FACELESS ASSESSMENT

With an aim to reduce time and cost for the EXIM community and to make them more competitive in the international arena, the CBIC has implemented next generation reforms through ***Turant Customs***, strongly enabled by technology.

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- Turant Customs is a ***mega reform*** for the ease of doing business.
- This flagship initiative stands on the ***pillars*** of – ***Faceless, Contactless and Paperless Customs.***
- A key enabler in Turant Customs is ***Faceless Assessment.*** It has been rolled out in phases and covered the entire country. It is a path breaking initiative ***aimed at introducing anonymity and uniformity in Customs assessments*** pan India.
- Anonymity in assessment and load balancing of import documents that are required to be assessed would bring about ***more efficiency and help improve the speed of Customs clearances across India.*** This was the trigger for the conceptualization and development of Faceless Assessment.

4.1 - What is Faceless Assessment?

- Faceless Assessment is a major Customs Reforms where a ***Bill of Entry that is identified for scrutiny (non-facilitated Bill of Entry) is assigned to an assessing officer who is physically located at a Customs station, which is not the Port of Import*** in the Customs Automated System.
- It separates ***uses a technology platform*** to separate the Customs assessment process from the physical location of a Customs officer at the port of arrival. This measure will bolster efforts to ***ensure an objective, free, fair and just assessment.***
- Faceless Assessment is also called ***virtual assessment*** or ***anonymised assessment***.
- ***From the importer's perspective, there will be no change in the process of filing the Bill of Entry.***

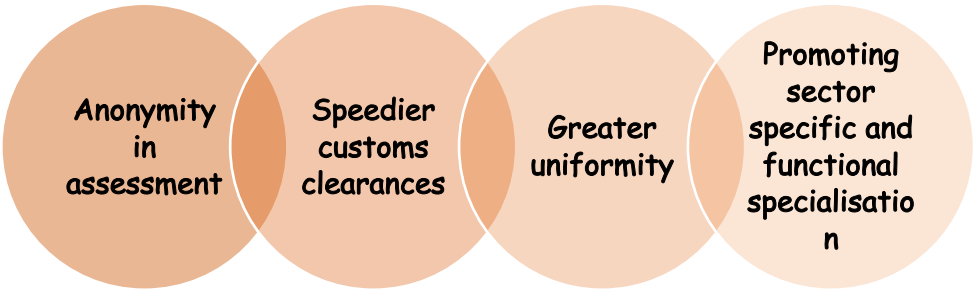
4.2 - Key Objectives of Faceless Assessment

i) ***Anonymity in assessment*** for reduced physical interface between trade and Customs.

ii) ***Speedier Customs clearances*** through efficient utilisation of manpower.

iii) ***Greater uniformity of assessment*** across locations.

iv) ***Promoting sector specific and functional specialisation*** in assessment.



5. PAYMENT THROUGH ELECTRONIC CASH LEDGER AND ELECTRONIC DUTY CREDIT LEDGER

5.1 - Ledger for payment of Duty, Interest, Penalty, etc. - Section 51A

- This section provides for ***advance deposit*** which would enable payment of duties, taxes, fee, interest, and penalty ***through electronic cash ledger (ECL).***
- With the use of an authorized mode of payment, persons who regularly make payment of duty, interest and even penalty (i.e., importer, exporter or Customs Brokers) are ***permitted to 'deposit' a certain amount of money.*** When the occasion to make payment arises, ***they can pay by debit to the balance in the ECL balance.***
- The ***balance in the ECL, after payment*** of duty, interest, penalty, fee or any other amount payable, may be ***refunded*** in the prescribed manner.
- The CBIC may prescribe the persons on whom, and goods in respect of which, provisions of Electronic Cash Ledger shall not apply.

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5.2 - Ledger for Duty Credit - Section 51B

Duty credit shall be issued in lieu of –

a) ***Remission of any duty/tax/levy, chargeable on any material used in the manufacture/processing of goods*** or for carrying out any operation on such goods in India that are exported, ***or***

b) ***Such other financial benefit*** subject to specified conditions and restrictions

The duty credit shall be ***maintained in the customs automated system in the form of an electronic duty credit ledger (DCL)*** of the person who is the recipient of such duty credit.

The duty credit available in the DCL ***may be used towards making payment of duties payable*** under the Customs Act or under the Customs Tariff Act, 1975 in the prescribed manner and time.

5.3 - Procedure for disposal of goods not cleared - Section 48

Any ***goods imported*** from a place outside India –

- Which are ***not cleared either for home consumption or for warehouse within 30 days*** (or within such further time as the P.O. may allow), or
- ***Title to which has been relinquished u/s 23,***

the ***custodian of the goods is permitted***, with the approval of the customs department and after giving notice to the importer, ***to sell the goods by auction.***

*In the case of **sensitive goods** like animals, foodstuffs and hazardous goods etc. the custodian with the approval of the P.O. **can sell the goods even before the expiry of the 30 days limit.***
*In the case of **arms or ammunition**, which **cannot be sold in public auction,** the disposal is regulated by the rules made in this regard.*

1) The ***successful bidder shall be informed of the result of the auction***, after which a ***consolidated bill of entry, buyer-wise will be filed with the Customs*** in the prescribed format ***by the concerned custodian*** for clearance of the goods.
2) The P.O. shall ***assess the goods to duty within 15 days of filing the Bill of Entry*** and after assessment inform the amount of duty payable to the concerned custodian.

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3) The ***auctioned goods shall be handed over to the successful bidder*** after assessment and out-of-charge orders given by the P.O., ***on payment of dues.***

5.4 - Storage of Imported Goods in warehouse pending Clearance or Removal - Section 49

In case goods cannot be cleared or removed for deposit in a warehouse within a reasonable time, the goods can be ***stored in a public warehouse for a period not exceeding 30 days.***

This period of 30 days ***may be extended by the Principal CCus./CCus. for further 30 days at a time.***

6. EXPORTATION

6.1 Export Goods not to be loaded on vessel until Entry Outwards granted - Section 39

The master of the vessel shall not begin the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

This restriction is for vessels and not for aircraft and vehicles.

6.2 - Export Goods not to be loaded unless duly passed by Proper Officer - Section 40 – applies to all types of conveyances

The person-in-charge of a conveyance shall not permit the loading at a customs station –

a. ***Of export goods, other than baggage and mail bags***, unless a ***shipping bill or bill of export or a bill of transshipment***, as the case may be, duly passed by the P.O., ***has been handed over to him*** by the exporter,
b. ***Of baggage and mail bags*** unless their export has been ***duly permitted by the P.O.***

6.3 - Delivery of Departure Manifest/ Export Manifest/ Export Report - Section 41

- The ***person-in-charge of a conveyance*** carrying export goods/ imported goods, or any other person as CG may specify, shall ***deliver to the P.O. –***
  - ***In case of vessel/aircraft*** – A departure manifest or export manifest in electronic form
  - ***In case of vehicle*** – An export report, in prescribed form and manner.
- These shall be ***delivered before the departure of the conveyance from the Customs Station.***
- If the person-in-charge ***fails to deliver*** such departure manifest/ export manifest/ export report within the time as specified, and the ***P.O. is satisfied that there is no sufficient cause for such delay***, such person-in-charge or other person shall be ***liable to pay penalty not exceeding ₹ 50,000/-.***
- Where it is ***not feasible to deliver departure manifest or export manifest by presenting them electronically***, the Principal CCus./CCus. may, allow the same to be delivered in any other manner.

6.3.1 - Amendment to EGM

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The P.O. may permit the departure manifest/export manifest/ export report to be amended, if –

a) He is satisfied that the ***manifest/report is in any way incorrect, and***

b) There was ***no fraudulent intention.***

6.3.2 - Preparation of Export General Manifest

The EGM is a consolidated report of all Bills of Lading/Air Consignment Notes/Railway Receipts/Lorry Receipts issued.

Shipment by the sea

Ship's officer gives mate receipt after receiving the consignment on board the ship.	It is surrendered to the steamer agent or the agent who issues the bill of lading

Shipment by air

Cargo is delivered to the airways for loading, the airways issues an air consignment note.

Shipment by train/ lorry

Railway/lorry receipt is issued once the consignemnt is received by the carrier.

6.4 - Passenger and Crew Departure Manifest and Passenger Name Record Information - Section 41A

- The ***person-in-charge of a conveyance that departs from India to a place outside India or any other person*** as may be specified by the CG, shall ***deliver to the P.O.*** within the time prescribed, –
  - ***The passenger and crew departure manifest***, and
  - ***The passenger name record information*** of departing passengers.
- Where it is ***not delivered to the P.O. within the time specified*** and the P.O. is satisfied that there was ***no sufficient cause for such delay***, the person-in-charge or the other specified person shall be liable to such ***penalty, not exceeding ₹ 50,000***, as may be prescribed.

6.5 - No conveyance to leave without Written Order - section 42

The person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall ***not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the P.O.***

Conditions for passing the order	Person-in-charge has answered the question put to him u/s 38
	Provisions of Section 41 have been complied with.
	The shipping bills/ bill of export/ bill of transshipment have been delivered
	All duties on any stores consumed in such conveyance+ all charges and penalities due has been paid or secured by guarantee.
	No penalty payable by pesron -in-charge u/s 116 orsuch payment has been secured by a guarantee.
	In case such goods have been loaded without payment of export duty or in contravention of any law such goods have been either unloaded or otherwise, person-in-charge has given an undertaking for bring back the goods, secured by guarantee.

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7. PROCEDURE FOR THE CLEARANCE OF EXPORT GOODS

7.1 - Entry of Goods for Exportation - Section 50

- The ***exporter shall present electronically*** on the Customs Automated System, to the P.O. –
  a. ***A shipping bill – in case of export by vessel/air,***
  b. ***A bill of export – in case of export by a vehicle.***
- Where it is not feasible to make an entry by presenting electronically, the Principal CCus./CCus. shall allow an entry to be presented in any other manner.

- ***Form for shipping bill*** – Prescribed under the Shipping Bill and Bill of Export (Forms) Regulations, 2017.
- ***When to file the Shipping Bill –***

  Normally the shipping bill shall be filed only after an entry outward has been granted for that particular vessel/aircraft.

  However, under special circumstances the Principal CCus./CCus. may permit advance shipping bill to be filed.

7.2 - Clearance of Goods for Exportation - Section 51

- Once the shipping bill is presented, the officer of customs shall check that the goods are not prohibited for export and whether they are liable to any export duty.
- The customs officer shall ***make an order for shipment on the duplicate copy of the shipping bill when he is satisfied that –***
  - The ***goods are not prohibited*** for export, ***and***
  - The ***exporter has paid the duty*** and other charges payable.

  This order is known as ***'Let Export' order.***
- ***Deferred payment of duty –***

  The CG may, in certain cases permit certain class of exporters to make deferred payment of said duty. ***In such case 'Let Export' order can be ordered before duty is paid.***

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  However, where the ***exporter fails to pay the export duty, either in full or in part, by such due date*** as may be specified by rules, he will have to ***pay interest*** on said duty not paid or short-paid till the date of its payment.

  The CG may notify a rate of interest between 5% p.a. and 36% p.a.

7.3 - Notice of Short-Export of Goods

If any goods mentioned in a shipping bill or bill of export and cleared for exportation are ***not exported –*** the exporter shall, ***within 7 days from the date of departure of the conveyance, furnish the prescribed information to the P.O.*** in respect of such goods.

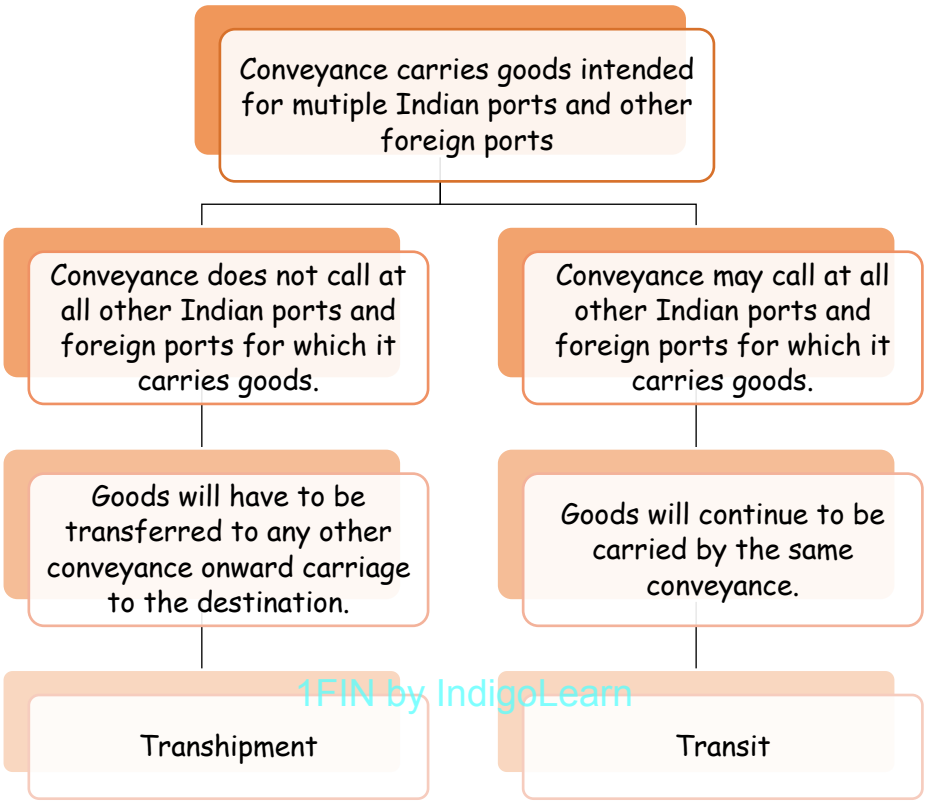
8. TRANSIT AND TRANSHIPMENT

8.1 - Transhipment

- Where a conveyance which ***carries goods intended not just for a particular customs station alone, but for other Indian ports and other foreign ports as well***, and
- ***such conveyance does not call at all other Indian ports/customs stations*** and foreign ports for which it carries goods,
- then the goods have to be ***transferred to any other conveyance onward carriage to the destination***. This is called ***transhipment***.

8.2 - Transit

- Where a conveyance which ***carries goods intended not just for a particular customs station alone, but for other Indian ports and other foreign ports as well***, and
- the ***conveyance calls at all other Indian ports/customs stations*** and foreign ports for which it carries goods, then the goods will ***continue to be carried by the same conveyance.*** This is called ***transit of goods.***



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8.3 - Difference between Transit and Transhipment

Transit of goods	Transhipment of goods
• The record already made in the ship's/ aircraft's manifest will continue. • The destination of the cargo consignment wise has to be shown in the same bottom cargo manifest. • when the conveyance calls at the next Indian customs port or airport the goods have to figure in the Import General Manifest filed there as landing cargo or same bottom cargo as the case may be.	In case of transhipment the goods are landed in the particular Indian customs station. Thereafter, they have to be shipped by a conveyance to the destination to be transhipped. Hence caution has to be taken at the following stages to ensure that goods are not illicitly smuggled into India – • During the period when the transhipment goods lie in the Indian customs station, • When the goods are transhipped by another conveyance to their final destination, • Where the transhipped goods are destined to another Indian customs station, care has to be taken at that

	station for actual landing and proper clearance.

8.4 - Applicability

- The statutory provisions relating to Transit and Transhipment of goods are covered in ***sections 52 to 56*** of the Customs Act.
- However, these sections are ***not applicable to –***
    - ***Baggage,***
    - ***Goods imported by post, and***
    - ***Stores.***

8.5 - Transit of Goods in the same Vessel or Air - Section 53

Goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as for ***transit in the same conveyance to any place outside India or any customs station, may be allowed by the P.O. to transit without the payment of duty.***

8.6 - Transshipment of goods without payment of duty - Section 54

- Where any ***goods are intended for transhipment –***
    - A ***bill of transhipment shall*** be presented to the P.O.
    - If the ***goods are being transferred under an international treaty or bilateral agreement*** between the GOI and government of a foreign country – ***Declaration of transhipment.***
- ***Goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as for transshipment*** to any place outside India may be allowed to be ***transshipped without payment of duty.***
- Where the goods are mentioned in the arrival manifest, etc., as for transhipment -
    - ***To any major port/*** any other port mentioned by the CG in this behalf, ***or***
    - ***To any other customs station*** and the ***P.O. is satisfied that the goods bonafide intended for transhipment to such customs station,***

  he may ***allow the goods to be transshipped without the payment of duty***, subject to such ***conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.***

8.7 - Liability of duty on goods transited u/s 53 or transhipped u/s 54 - Section 55

Goods transited u/s 53 or transhipped u/s 54 shall, ***on their arrival at such station, be liable to duty*** and shall be entered in like manner as goods are entered on the first importation thereof.

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8.8 - Transport of certain classes of goods subject to prescribed conditions - Section 56

Imported goods may be transported ***without payment of duty from one customs station to another***, and any goods may be transported ***from one part of India to another part through any foreign territory***, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.

ILLUSTRATIONS

Illustration 1

Shyam Lal has imported goods from Germany and is finally re-assessed u/s 18(2) of the Customs Act, 1962 for two such consignments.

Following are the particulars:

Date of provisional assessment	12th December, 2017
Date of final re-assessment	2nd February, 2018
Duty demand for 1st consignment	Rs. 1,80,000
Refund for the 2nd consignment	Rs. 4,20,000
Date of refund made by the department	28th April, 2018
Date of payment of duty demanded	5th February, 2018

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Determine the interest payable and receivable, if any, by Shyam Lal on the final re-assessment of the two consignments, with suitable notes thereon.

6. WAREHOUSING

Contents

- Types of warehouses and cancellation of license.
- Warehousing bond and cancellation thereof.
- Owner's right to deal with warehoused goods.
- Removal of goods for warehousing and the effect of improper removal.
- Period for which goods may remain in a warehouse.

1. INTRODUCTION

There are instances when the importer does not want to clear the imported goods lying at the customs station, immediately. Some of the reasons could be

- Falling market prices,
- Declining saleability or lower requirements,
- Lack of storage facilities in importer's premises,
- Arrival of shipment much earlier than planned,
- Working capital issues,
- Warehousing for supplies to EOU/ EHTP/ STP/ SEZ units.

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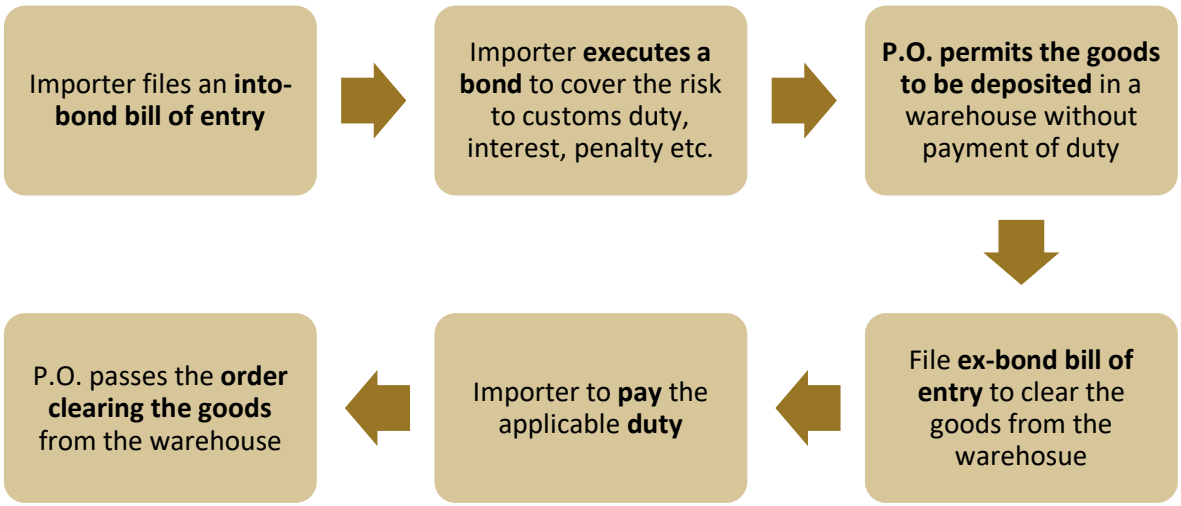
Sections 57 to 73A of the Customs Act, 1962 deal with warehousing provisions. The imported goods after landing may be allowed to be removed to a warehouse without payment of customs duty. ***Duty is paid at the time of clearance from the warehouse.***



Note : Into-bond bill of entry is the Bill of entry for warehousing. Ex-bond bill of entry is the Bill of entry for clearance from warehouse.

Consideration that the importer is required to pay to avail the warehousing facility –

i) Bind himself to the Govt. to pay thrice the amount of total duty determined with such surety/security as determined, and

ii) Agree to pay duty on the goods cleared from the warehouse at the rate and valuation prevalent on the date on which Bill of entry is presented.

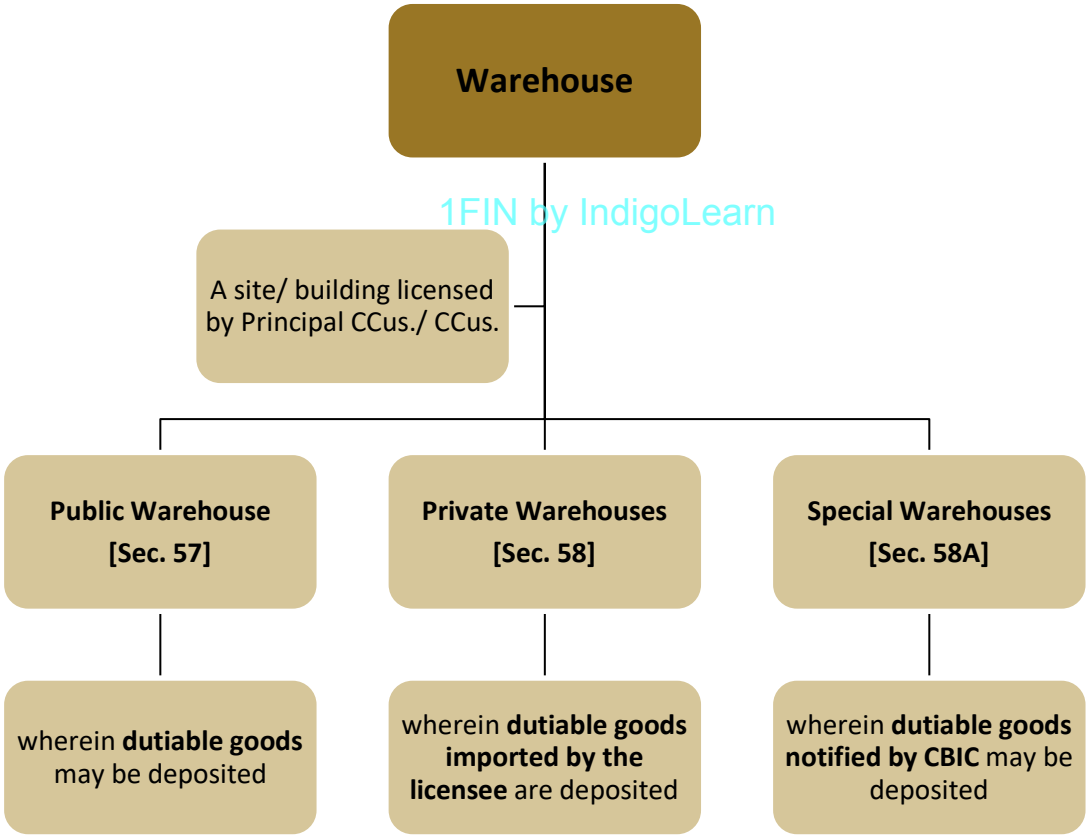
1. TYPES OF WAREHOUSES

2.1 Warehouse [Section 2(43)]

Warehouse ***means***

- A ***public warehouse*** licensed u/s 57 or
- A ***private warehouse*** licensed u/s 58 or
- A ***special warehouse*** licensed u/s 58A.

2.2 Three types of warehouses



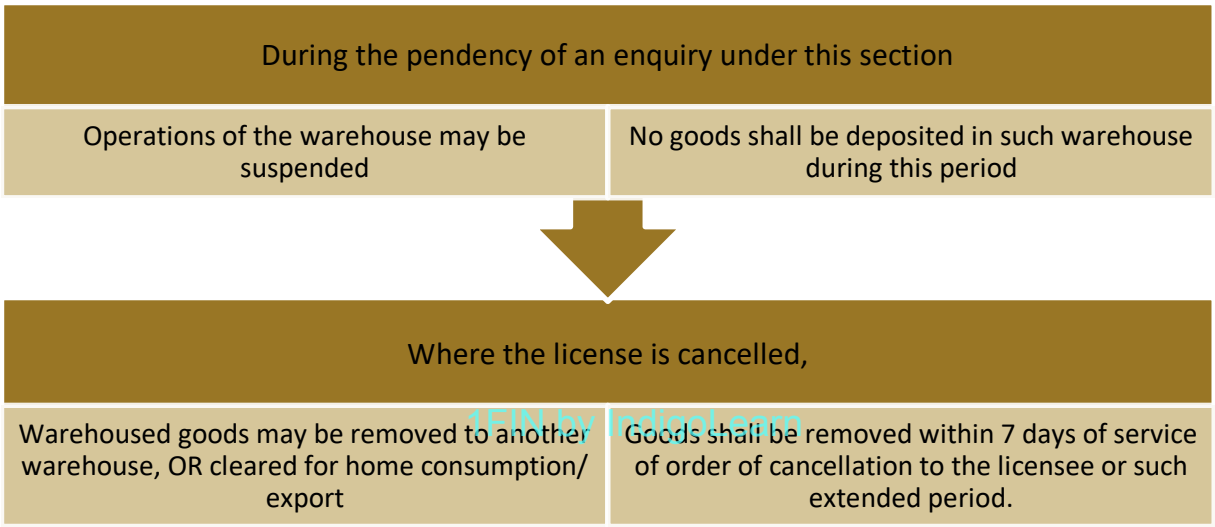
- Public warehouses u/s 57 and private warehouses u/s 58 are under ***record based controls*** and not under customs lock, whereas special warehouses u/s 58A remains under physical record of P.O. (i.e., under ***customs lock***).
- ***Special warehouses*** will be caused to be ***locked by the P.O.*** and no person will enter the warehouse or remove any goods therefrom without the permission of the P.O.

- The ***license is not required to be renewed*** annually. Also, it is ***not transferable*** and valid till its cancellation/surrender.

Some of the **dutiable goods notified by CBIC for deposit in the Special warehouse** are gold, silver, other precious metals and articles, goods warehoused for supply to Duty Free Shop (DFS), supply as stores to vessels/aircrafts and supply to foreign privileged persons.

2. CANCELLATION OF LICENSE [SECTION 58B]

License granted for all types of warehouses ***may be cancelled by the Principal CCus./ CCus.*** if the licensee ***contravenes any of the provisions*** of the customs law or breaches any of the conditions of the licence, after giving the licensee an opportunity of being heard.



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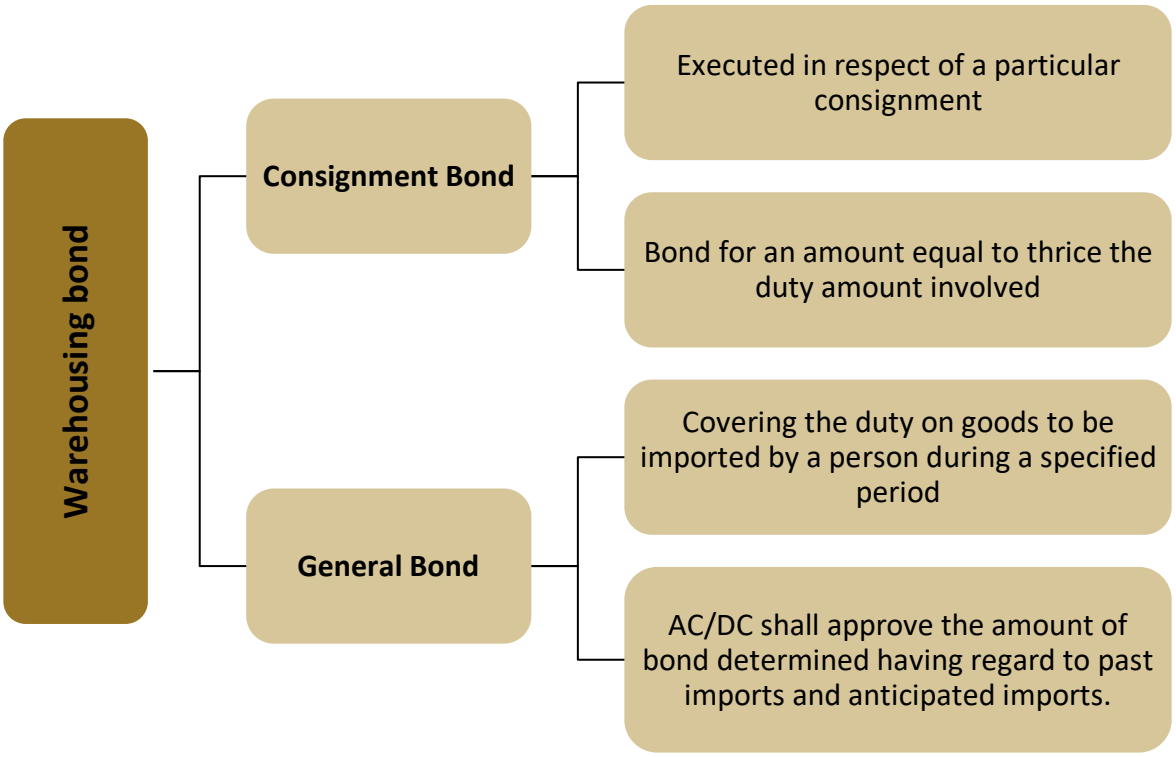
3. WAREHOUSING BOND [SECTION 59]

- An importer desirous of warehousing the goods without paying customs duties needs to ***execute an indemnity bond to cover the risk to Government revenue.***
- ***An importer executing bond binds himself –***
  - to ***comply with all the provisions of the Customs law*** in respect of such goods,
  - ***to pay***, on or before the date specified in the demand notice, ***all duties and interest,*** and
  - ***to pay all penalties and fines*** incurred for the contravention of the provisions of the customs law, in respect of such goods.
  - In addition to the bond, importer may ***also be required to furnish prescribed security.***



- These bonds will continue to be ***valid even if the goods are transferred to another warehouse.***
- If the ***warehoused goods are transferred to another person***, the ***transferee will have to execute the bond*** and furnish prescribed security.

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4. PERMISSION FOR REMOVAL OF GOODS FOR DEPOSIT IN WAREHOUSE [SECTION 60]

Once the importer has furnished the stipulated bond and security u/s 59, the ***P.O. may make an order permitting the deposit of the goods in a warehouse. The order may be also made electronically.***

5. PERIOD FOR WHICH GOODS MAY REMAIN IN A WAREHOUSE [SECTION 61]

6.1 Warehousing Period

The ***period for which imported goods may be kept in a warehouse without payment of duty*** is called warehousing period.

Capital goods for use in 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permited u/s 65

Till the clearance of such goods from warehouse

Goods other than capital goods for use in 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permited u/s 65

Till the consumption or clearance of such goods from warehouse

Other cases

Till the expiry of 1 year from the date of order permitting deposit in the warehouse

Extension

The Principal CCus./ CCus. may extend the warehousing period by not more than 1 year at a time.

6.2 Interest on warehoused goods

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i) ***EOUs, EHTPs, STPs, or warehouses where manufacture/ other operations are permitted under section 65 –***

No interest is chargeable for the period that goods remain warehoused as warehousing period is till ex-bonding or consumption.

ii) Other cases –

- Interest will be payable if ***goods remain in the warehouse beyond 90 days*** from the date on which the order permitting deposit of goods in a warehouse u/s 60 is made.
- Rate of interest is fixed at ***15% p.a.***

iii) Waiver of interest –

The Board may waive the interest ***wholly or partially***,

- In individual cases by ad-hoc order or
- By notification in respect of any class of goods.

Further, the Board may ***also notify the class of goods in respect of which the interest will be chargeable from the date of order permitting deposit*** of goods in a warehouse.

6. OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS [SECTION 64]

When goods are warehoused, even though temporary possession and custody is passed on to the warehouse keeper, the title to the goods remains with the owner.

Thus, the owner may –

- ***Inspect*** the goods,
- ***Ensure that the goods do not deteriorate or get damaged*** during storage in the warehouse,
- ***Sort*** the goods, or
- ***Show the goods for sale***.

7. MANUFACTURE AND OTHER OPERATIONS IN RELATION TO GOODS IN A WAREHOUSE [SECTIONS 65 & 66]

- The owner of any warehoused goods may carry on any **manufacturing process or other operations in relation to warehoused goods in a custom bonded warehouse.**
- Manufacture and other operations in a bonded warehouse are **allowed only in a Private Bonded Warehouse** and not in in Public Bonded Warehouse. Also, in respect of **goods notified to be warehoused in Special Warehouse**, manufacture and other operations are also **allowed in a Special Bonded Warehouse.**
- **After manufacture**, the produced goods may either be **exported** out of India **or cleared for home consumption.**

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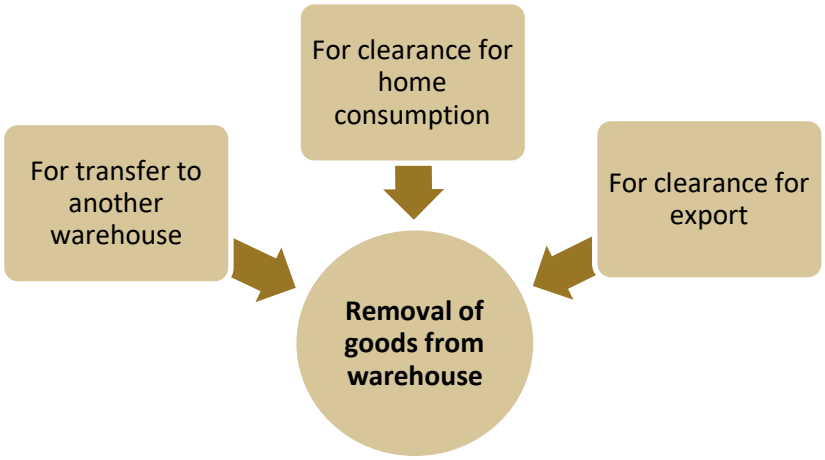
  - ***Exported*** – The duties are fully remitted.
  - ***Cleared for home consumption*** – Import duty, interest, fine and penalties, if any, are payable.
- ***Import duty on waste or refuse generated during the manufacturing operations etc. –***
  - ***Whole/ part of goods are exported – Import duty shall be remitted*** on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported.
  - ***Whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption*** – Import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.
- ***Imported materials used for the manufacture of any goods in accordance with Sec. 65 –***

  If the rate of ***duty leviable on such imported materials exceeds the rate of duty leviable on such goods***, the CG, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, ***exempt the imported materials from the whole or part of the excess rate of duty.***

8. REMOVAL OF GOODS FROM THE WAREHOUSE [SECTIONS 67, 68 & 69]



9.1 Transfer of warehoused goods from one warehouse to another [Section 67]

- ***Permission of P.O.*** is required for such transfer.
- Transfer subject to the ***conditions prescribed for the due arrival of the warehoused goods*** at the warehouse to which removal is permitted.

9.2 Clearance of warehoused goods for home consumption [Section 68]

- ***Ex-bond bill of entry t***o be presented to the P.O.
- After assessment of the ex-bond bill of entry, the ***duty determined in the same should be paid.***
- Along with the import duty, the ***interest, penalty, if any***, imposed or levied on such goods should also be paid.
- After payment of all duties, the P.O. may permit removal of the goods from the warehouse and ***pass a suitable order for clearance.***
- ***The owner of the warehoused goods may relinquish the title to such goods and not be liable to pay duty thereon***

9.3 Clearance of warehoused goods for export [Section 69]

- Warehoused goods may be exported to a place outside India.
- ***No import duty will be levied*** on the goods so exported subject to fulfilment of conditions prescribed.
- A ***shipping bill/bill of export/label or declaration accompanying the goods*** should be presented.
- ***The export duty, fine and penalties payable***, if any, on such goods on export should be ***assessed and paid.***

- The P.O. of customs should satisfy himself that all regulations, restrictions and prohibitions in force in respect of export of such goods, is complied with or fulfilled after which P.O. will ***make an order for clearance of warehoused goods for export from the bonded warehouse.***
- In case CG is of the opinion that ***goods of any specified description are likely to be smuggled back into India***, it may by notification in the Official Gazette, ***direct that such goods:***
    - ***Shall not be exported without payment of duty*** or
    - ***May be allowed*** to be so exported ***subject to such restrictions and conditions*** as may be specified in the notification.

9. ALLOWANCE IN RESPECT OF VOLATILE GOODS [SECTION 70]

Some warehoused goods are subject to normal loss owing to the volatility of such goods and the manner of their storage. This results in difference between the bonded quantity and the quantity at the time of removal from the warehouse.

Since, this loss is due to natural causes, neither the importer nor the warehouse keeper can be asked to bear the duty of such loss.

When any ***warehoused goods notified goods under this section*** are at the time of delivery from a warehouse ***found to be deficient in quantity on account of natural loss***, the ***AC/DC of Customs may remit the duty*** on such deficiency.

Petroleum products like aviation fuel, motor spirit, etc., wine, spirit and beer, etc., have been specified as goods notified u/s 70 1FIN by IndigoLearn

Distinction between remission under section 23 and section 70

Section 23 is applicable where goods are lost before clearance for home consumption is made. Whereas, section 70 provides for remission of duty in respect of loss during warehousing of only the goods notified by the CG.

10. IMPROPER REMOVAL OF GOODS FROM WAREHOUSE

11.1Prohibitions on removal of goods [Section 71]

This section prohibits the removal of the warehoused goods out of a warehouse ***except on clearance for home consumption, or export, or for removal to another warehouse, or as otherwise provided by the Customs Act.***

11.2 Cases where P.O. may demand duty to be paid [Section 72]

The P.O. may demand, the full amount of duty chargeable on account of warehoused goods together with interest, fine and penalties payable in respect thereof, in the following cases –

a) Where any ***warehoused goods are removed in contravention of section 71***,

b) where any ***warehoused goods have not been removed from a warehouse at the expiration of the period*** during which such goods are permitted u/s 61 to remain in a warehouse,

c) where any ***goods in respect of which a bond has been executed u/s 59 and which have not been cleared for home consumption or export are not duly accounted for*** to the satisfaction of the P.O.

Where the ***owner fails to pay duty chargeable*** on account of warehoused goods together with interest, fine and penalties payable – ***The P.O. may cause such goods to be detained and sold,*** in sufficient portion as he may deem fit after giving a notice to the owner for the same.

11. CANCELLATION AND RETURN OF THE WAREHOUSING BOND [SECTION 73]

The P.O. shall cancel the warehousing bond executed u/s 59 as discharged in full ***when*** –

- ***The whole of the goods covered by any bond have been cleared*** for home consumption or exported or transferred or are otherwise duly accounted for, ***and***
- ***All amounts due*** on account of such goods ***have been paid.***

12. CUSTODY AND REMOVAL OF WAREHOUSED GOODS [SECTION 73A]

The ***warehouse keeper appointed by the licensee*** will be in-charge of the warehouse and shall have a computerised system for accounting of goods.

Section 73A stipulates that ***all warehoused goods will remain in the custody of the person who has been granted a licence under section 57/58/58A until they are cleared*** for home consumption or transferred to another warehouse or exported or removed as otherwise provided under Customs Act.

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Where any ***warehoused goods are removed in contravention of section 71***, the licensee shall be liable to pay duty, interest, fine and penalties, in addition to any other action that may be taken against him under this Act or any other law.

Duties of a warehouse keeper –

- Maintain ***records of receipt, handling, storing, and removal*** of any goods into/from the warehouse,
- Maintain ***records of each activity/operation*** in relation to the warehoused goods,
- Maintain ***records of drawal of samples*** from the warehoused goods.
- Keep copies of ***documents evidencing the receipt/removal of goods*** into/from the warehouse and ***copies of the bonds executed.***
- These records and accounts are **to be preserved for 5 years from the date of removal of goods.** Further, digital copies are also to be maintained at any place other than the warehouse.

Illustration 1

Vipul imported certain goods in May. An 'into bond' bill of entry was presented on 14th May and goods were cleared from the port for warehousing. Assessable value on that date was US $ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 21st September.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty and interest. Vipul cleared the goods on 14th October. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of the following information:

Particulars	**14th May**	**21st Sept**	**14th Oct**
Rate of exchange per US $ (as notified by Central Board of Indirect taxes & Customs)	65.20	65.40	65.50
Basic customs duty	15%	10%	12%

Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt. Ignore agriculture and infrastructure development cess.

Illustration 2

With reference to Section 70 of the Customs Act, 1962, briefly discuss the conditions to be satisfied for remission of duty in case of volatile goods.

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Illustration 3

Who can suspend or cancel a warehousing license and on what grounds? What is the effect of suspension or cancellation on the warehouse and on the goods in the warehouse? Explain with the provisions related to cancellation of license under section 58B of the customs Act, 1962

7. REFUND

Contents

- Application of refund.
- Processing of claim for refund.
- Interest payable on delay in payment of refund.
- Conditions subject to which refund of import duty/ export duty is paid.
- Doctrine of unjust enrichment with respect to refund.

1. APPLICATION FOR REFUND OF DUTY OR INTEREST - SECTION 27

1.1 Person who can claim refund of duty / interest

Refund of duty/ interest paid can be claimed by –

a) The ***person who paid*** the duty or interest in excess, or

b) The ***person who bore the incidence*** of such duty or interest.

The application for refund shall be made in such form or manner as may be prescribed.

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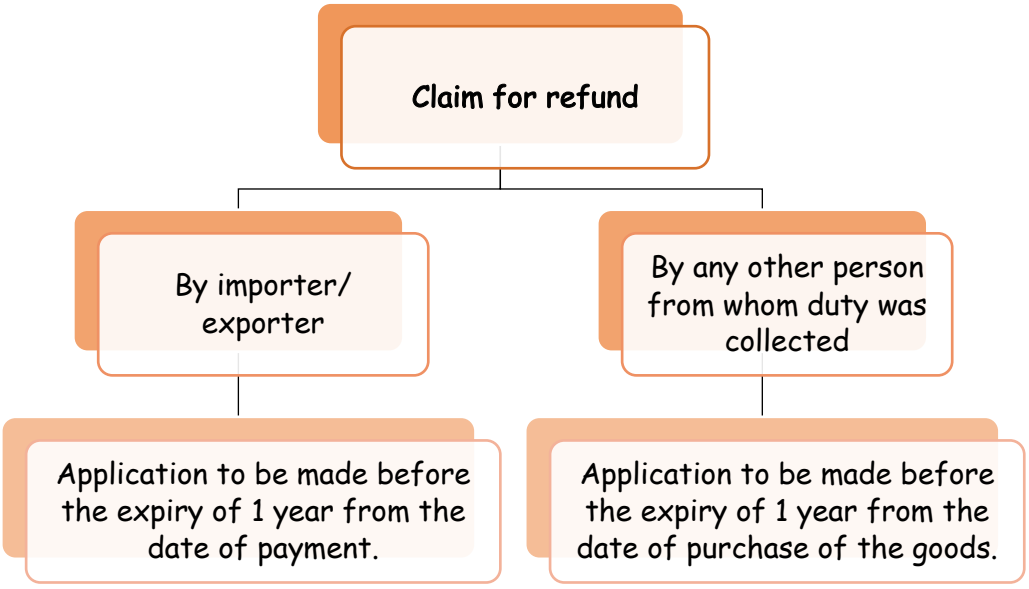
1.2 Time limit of filing application for refund



Computation of one year in other cases –

Event	*Limitation of 1 year to be computed from the*
Exemption of duty by a special order issued under section 25(2)	Date of issue of such order
Refund of duty arising as a consequence of any judgment, decree, order or direction of	Date of such judgment, decree, order or direction

the appellate authority, Appellate Tribunal or any court	
Provisional payment of duty under section 18	Date of adjustment of duty after the final assessment, or in case of re-assessment, from the date of such re-assessment

Limitation of one year shall not apply in case the duty/ interest has been paid under protest.

1.3 Minimum amount of refund

Amount of refund ***below ₹ 100 shall not be refunded.***

1.4 Documentary evidence to be furnished

Refund application must be accompanied by ***documentary or other evidence referred to in section 28C*** to establish that –

- The amount of duty or interest, in relation to which such refund is claimed, was collected from or paid by him, and
- That the incidence of such duty or interest has not been passed on by him to any other person

2. PROCESSING OF REFUND CLAIM [SECTION 27(2)]

In view of the ***provisions of unjust enrichment*** enshrined in the Customs Act, the ***amount*** found refundable has to be ***transferred/credited to the Consumer Welfare Fund.***

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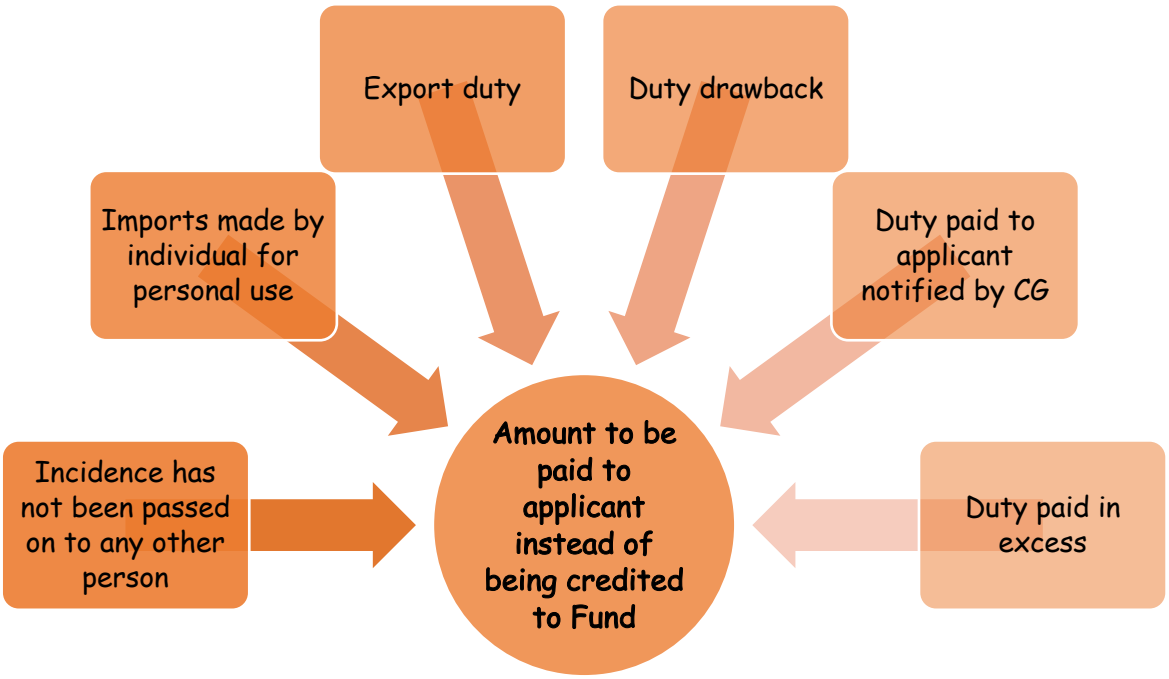
However, ***in the following situations the amount of duty and interest payable shall be paid to the applicant*** instead of being credited to the Consumer Welfare Fund –

- If the ***importer/exporter has not passed on the incidence of such duty and interest*** to any other person.
- If the ***buyer who has borne*** the duty and interest, has ***not passed on the incidence of such duty and interest to any other person.***
- If ***imports*** were made ***by an individual for personal use.***
- If amount found refundable ***relates to export duty paid on goods which has returned to exporter*** as specified in section 26.
- If ***amount relates to drawback*** of duty payable u/s 74 and 75.
- If the duty or interest was ***borne by a class of applicants which has been notified*** for such purpose in the official gazette by the CG.
- If the ***duty paid in excess by the importer*** before an order permitting clearance of goods for home consumption is made where –
    - i) Such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry, or

ii) The duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.



3. DOCTRINE OF UNJUST ENRICHMENT WITH RESPECT TO REFUND OF DUTY

- ✓ The ***incidence*** of customs duty paid by the importer or export duty paid by exporter is ***passed on to the purchaser*** when the goods are sold by them.
- ✓ Subsequently, ***if the importer or exporter makes a claim for refund*** of duty ***and receives the refund*** from the government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the government. Such enrichment is referred to as '***unjust enrichment***'.
- ✓ Hence, the doctrine of 'unjust enrichment' implies that ***no person should enrich himself at the cost of others.***
- ✓ When the person who applies for refund is not the person who has borne the burden of duty, the ***refund is paid into a fund called 'Consumer Welfare Fund'.***

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Case Law: Mafatlal Industries Ltd. v. U.O.I (SC)

Judgement: *The judgment is from the erstwhile Central Excise laws, the principles laid down in this judgement are applicable to all indirect tax laws.*

i) The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.

ii) Section 27 (Customs Act) is self-contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional.

iii) Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B of the Central Excise Act, 1944 and refuse to grant relief if the incidence of tax has been passed on.

iv) Whatever amount is collected as duty will have to paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

4. INTEREST ON DELAYED REFUND [SECTION 27A]

- ✓ Duty ordered to be refunded shall be ***refunded to the applicant within 3 months from the date of receipt of application for refund***. In case duty is not refunded within this time limit, interest is to be paid to the applicant, within the range of 5% and 30%, as fixed by the government.
- ✓ ***Currently, the rate of interest is 6%.***
- ✓ The interest is to be paid for the period beginning from the ***date immediately after the expiry of 3 months*** from the date of receipt of such application, ***till the date of refund of such duty.***
- ✓ If the ***refund is a result of an order passed by the appellate authorities*** or by a court of law, refund is to be paid within 3 months of the order, and interest will be paid after that.

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits.

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5. REFUND OF EXPORT DUTY IN CERTAIN CASES [SECTION 26]

Export duty shall be refunded to the person by whom or on whose behalf it was paid, if –

a) The ***goods are returned*** to such person ***otherwise than by re-sale***,

b) The ***goods are re-imported within 1 year*** from the date of exportation, ***and***

c) An ***application*** for refund of such duty ***is made before the expiry of 6 months from the date on which the P.O. makes an order for the clearance.***

6. REFUND OF IMPORT DUTY IN CERTAIN CASES [SECTION 26A]

The import duty paid on clearance of imported goods for home consumption shall be refunded to the person who has paid such duty subject to the fulfilment of the following ***conditions*** –

> Section 26A does not apply to the goods regarding which an offence appears to have been committed.

i) ***Goods are defective/ not as per specifications*** agreed upon between the importer and the supplier of goods.

Exception – Goods should not have been worked upon/ repaired/ used after importation except where such usage was necessary to discover the defects, etc.

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ii) Goods are ***identified*** to the satisfaction of the AC/DC of Customs.

iii) The importer ***does not claim drawback.***

iv) The ***importer*** –

- ***Exports*** the goods, or
- ***Relinquishes his title*** to the goods and abandons them to customs, or
- ***The goods are destroyed/ rendered commercially valueless*** in the presence of the P.O.

6.1 Time limit for filing application for refund

Application for refund of duty shall be made ***before the expiry of 6 months from the relevant date.***

Case	*Relevant date*
Goods exported out of India	Date on which the P.O. makes an order permitting clearance and loading of goods for exportation u/s 51
Relinquishment of title to the goods	Date of such relinquishment
Goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

6.2 Perishable goods

In respect of ***perishable goods and goods which have exceeded their shelf life*** or their recommended storage-before-use period, the ***refund shall not be allowed.***

The CBIC may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed.

7. REFUND CLAIM CANNOT BE A SUBSTITUTE FOR APPEAL

Case Law: Priya Blue Industries Limited (SC)

Facts: *Duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty.*

Judgement: *Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed u/s 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment.*

A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order.

8. IMPORTANT JUDGEMENTS ON REFUND

1. ***Corporation Bank v. Saraswati Abharansala (SC)***

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   Judgement – If excess tax is paid, the excess amount must be refunded except in cases involving the principles of unjust enrichment.

2. ***Jaswant b. Shah v. CC (Tribunal)***

   Judgement – Refund claim cannot be filed by the agent in his own name, without power of attorney.

3. ***Banmore Foam v. CCE (Tribunal -Delhi)***

   Judgement – Burden of proof that incidence of duty has not been passed on to consumers is on assessee.

4. ***CCus. v Consolidated Solvents and Chemical Corporation (Tribunal)***

   Judgement – Interest on delayed refund is payable at the rates as applicable time to time and not at the rate applicable on day when refund was due.

ILLUSTRATIONS

Illustration 1 (Set I)

Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.

Illustration 2 (Set I)

The assessee furnished bank guarantee to the department as required and imported capital goods at concessional rate of duty under an authorisation with export obligation.

Illustration 3 (Set I)

The assessee furnished bank guarantee to the department as required and imported capital goods at concessional rate of duty under an authorisation with export obligation

But failed to complete the export obligation within the prescribed time.

Consequently, the Department invoked the bank guarantee and realized the amount of duty foregone.

Subsequently the assessee fulfilled the export obligation and the same was also accepted by the Department.

The assessee filed a refund claim for the amount realized by the Department under the bank guarantee.

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The Department rejected the refund claim on the ground that it was time barred in terms of section 27 of the Customs Act, 1962.

Was the stand taken by the Department correct in law? Examine with the support of case law on the issue.

Illustration 4 (Set II)

M/s. HIL imports copper concentrate from different suppliers.

At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice.

When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.

M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities.

Department, however, has rejected the refund claim on the grounds of unjust enrichment.

whether the action of the department is correct in law?

Illustration 5 (Set II)

XYZ Ltd imported capital goods and used them in its factory to produce goods for sale.

Upon discovery of an error by which excess import duty had been paid on the said capital goods, it filed a claim for refund.

As regards unjust enrichment, it contended -

that the capital goods were not sold and hence the principle of unjust enrichment will not apply to the refund of import duty paid on capital goods; and

that in any case the price of the finished goods manufactured in the factory remained the same before and after the import and installation of the capital goods, which is sufficient proof to establish that duty burden has not been passed on.

Examine the merits of these contentions, with the support of case law, if any.

Illustration 6 (Set III)

Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications.

Discuss the conditions governing such refund in brief.

Illustration 7 (Set III)

Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay Rs.12 lakh, whichit paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of

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Rs.8 lakh on the ground that the differential amount should be Rs.4 lakh only and that there were factual errors in the verification report. Was this the correct mode of redressal for Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.

Illustration 8 (Set IV)

Mr. N has, over three consignments of 200, 400 and 400 units, imported a totalof 1000 units of an article "ZEP", which has been valued at Rs.1,150 per unit.The customs duty on this article has been assessed Rs.250 per unit. He adds his profit margin Rs.350 per unit and sells the article for Rs.1,750 per unit.

After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty forthe consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for

Rs.50,000 (200 X 250). Is the bar of unjust enrichment attracted?

Illustration 8 (Set IV)

Explain the relevant dates as provided in section 26A(2) of the customs Act,1962 for purpose of refund of duty under specified circumstances, namely

1. Goods exported out of India
2. Relinquishment of title to goods
3. Goods destroyed or rendered valueless

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8. BAGGAGE

1. PROCEDURE FOR POSTAL ARTICLES

1.1 Import / Export of Goods by Post or Courier

1.1.1 Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post [Section 83]

In case of Import	In case of Export
• The rate and valuation in force on the **date on which the postal Authorities or the authorized courier present a list of goods for assessment** of duty to the P.O. • If the **goods are imported by a vessel** and the **list of goods was presented before the date of arrival of the vessel**, the list shall be deemed to have been presented on the date of such arrival.	• The rate and valuation in force on **the date on which the exporter deliver such goods to the postal authorities** or the authorized courier for exportation.

1.1.2 Procedure for goods imported or to be exported by postal courier [Section 84]

The Board may make regulations for-

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a) The **form and manner in which entry** may be made,

b) The **examination, assessment** to duty and **clearance** of such goods,

c) The **transit or transshipment** of such goods from one customs station to another or to a place outside India.

1.2 Procedure for Import and Export of Goods by Post

- In the case of goods imported by post the agency for the carriage of goods is the Government of India be it through sea, air or land.
- **The control of the Customs Department is only on goods,** whether imported or exported
  - **On which there is a duty, and**
  - **Which are subject to prohibition or restriction** under the customs act or any other law for the time being in force.

1.3 Provisions under Indian Post Office Act

1.3.1 Power to deal with postal articles containing goods contraband or liable to duty [Section 24 of the Indian Post Office Act]

- The postal office authority has a **right and duty to open and examine a postal article** if he **suspects that the postal article contains any goods which are –**

- **Liable to duty of customs**, or
- **Subject to a prohibition** under any law in force.

- The postal authority shall issue a **notice in writing to the addressee, initiating him to attend**, either in person, or by an agent, within a specified time at a post office for opening of the postal article.
- **If the addressee or his agent does not turn up** at the appointed time and place, the **postal authorities are entitled to open and examine the postal article in his absence.**

1.3.2 Delivery to customs authority [Section 24A of the Indian Post Office Act]

Once the postal authorities have found some postal article to contain dutiable or prohibited goods, that authority, as empowered by the CG by a general or special order **should deliver the postal article in question to the customs authority for necessary action.**

2. SPECIAL PROVISIONS RELATING TO STORES

The term 'stores' has been defined u/s 2(38). It covers items like food, drink, medicines, life-saving equipment like oxygen and life boats, articles or equipment used for entertainment, in addition to fuel, spare parts and other equipment.

"**Store list**" in the prescribed format is required to be filed as part of the import manifest as well as export manifest / import report or export report.

2.1 Warehousing of Stores [Section 85]

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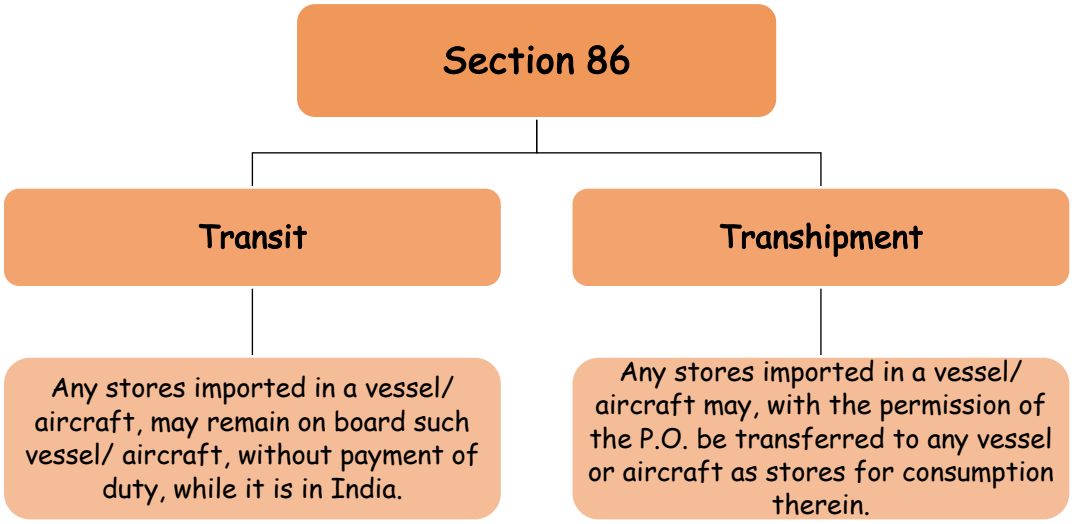
In case of **goods which are imported into India to be supplied as stores,** the P.O. may permit the **goods to be warehoused without the goods being assessed to duty, if–**

a) The **imported goods are entered for warehousing**, and

b) The **importer makes and subscribes to a declaration** that the goods are to be supplied as stores to vessels or aircraft without payment of import duty.

Section 85 is a deviation from the general provision of warehousing the goods, where the goods are assessed to duty at the time of warehousing. Though such duty is not payable at the time of warehousing.

2.2 Transit and Transhipment of Stores [Section 86 and 87]



Any imported stores on board a vessel or aircraft may, without payment of duty, be consumed during the period such **vessel or aircraft is a foreign going vessel or aircraft** [**Section 87**].

2.3 Application of Section 69 and Chapter X to Stores [Section 88]

- Section 69 – warehoused goods are allowed to be exported on payment of export duty from the warehouse. This benefit is also available to **warehoused goods** if they are **taken on board any foreign going vessel or aircraft as stores.**
- Section 74 - Where **duty paid imported goods are exported within two years**, then subject to certain conditions, such **duty shall be repaid as drawback.** This benefit is also available to stores.

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2.4 Supply of Stores [Section 89]

Goods produced or manufactured in India and required as stores on any foreign going vessel/ aircraft may be exported free of export duty in such quantities as the P.O. may determine having regard to –

- The size of the vessel or aircraft,
- The number of passengers and the crew, and
- The length of the voyage or journey on which the vessel or aircraft is about to depart.

2.5 Special provisions regarding Shipstores supplied to Indian Naval Vessels [Section 90]

- Imported stores for the use in a ship of the Indian Navy may without payment of duty be consumed on board the ship of Indian Navy.
- Imported stores supplied free by the Government for the use of the crew of a ship of the Indian Navy may be supplied without payment of duty to be consumed on board the ship of Indian Navy.
- The provisions of section 69 and Chapter X shall apply as they apply to other goods with the exception that they will be entitled to drawback of the whole of the duty of customs if any paid therein, instead of 98% alone otherwise applicable.

3. SPECIAL PROCEDURES RELATING TO CLEARANCE OF BAGGAGE

3.1 Entry of Baggage by Owner [Section 77]

The owner of baggage shall **make a declaration of its contents to the P.O.** for clearing it. This is known as **baggage declaration form.**

3.2 Rate of Duty and Tariff Valuation applicable to Baggage [Section 78]

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The relevant date for determining the rate of duty applicable to baggage is **the date of filing baggage declaration u/s 77.**

Rate of duty on baggage is 35% ad valorem except in case of –

i. Fire arms,

ii. Cartridges of fire arms exceeding 50,

iii. Cigarettes,

iv. Cigars, or

v. Tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules, and

vi. Goods imported through a courier service.

3.3 Duty Exemption to Baggage [Section 79]

The P.O. may pass free of duty –

a) Any article in the **baggage of a passenger/ member of the crew**, which has been **used by such passenger/ crew member for a minimum period** as specified in the rules,

b) Any article in the **baggage of a passenger** which is

- **for the use of the passenger or his family or is a bonafide gift/** souvenir, **and**
- the **value of each** such article **and the total value** of all such articles **does not exceed such limits as may be specified** in the rules.

The CG shall make the rules for the purpose of carrying out these provisions.

3.4Passenger Baggage Rules, 2016

3.4.1 General duty-free baggage allowance

	Class of passenger	Articles allowed free of cost
Rule 3	• Indian resident or • Foreigner residing in India or • Tourist of Indian origin, excluding an infant **Coming from any country other than Nepal, Bhutan or Myanmar.**	i) **Used personal effects** and travel souvenirs, and ii) Articles up to the value of **₹50,000** if carried on in person or in the accompanied baggage of the passenger.
	Tourist of foreign origin excluding infant **coming from any country other than Nepal, Bhutan or Myanmar.**	i) **Used personal effects** and travel souvenirs, and ii) Articles up to the value of **₹15,000** if carried on in person or in the accompanied baggage of the passenger.
Rule 4	• Indian resident or • Foreigner residing in India or • Tourist, excluding an infant **Coming from Nepal , Bhutan or Myanmar.**	i) **Used personal effects** and travel souvenirs, and ii) Articles up to the value of **₹15,000** if carried on in person or in the accompanied baggage of the passenger. **If arriving by land –** only used personal effects.

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Notes –

- *In case of passenger who is an infant (i.e., not more than 2 years), only used personal effects will be allowed duty free.*
- *Personal effects – things required for satisfying daily necessities but excludes jewellery.*
- *The general duty-free baggage allowance of a passenger cannot be pooled with the general duty-free baggage allowance of any other passenger.*
- *Resident – a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India.*
- *Tourist – a person not normally resident in India, who enters India for a stay of not more than 6 months in the course of any 12 months period for legitimate non-immigrant purposes.*

3.4.2 Jewellery Allowance [Rule 5]

- **Class of passenger –** Passenger **residing abroad for more than 1 year.**
- **Articles allowed free of duty –**

i) **Gentleman –** jewellery up to a weight of **20 gms** with a value cap of **₹ 50,000.**

ii) **Lady passenger –** Jewellery up to a weight of **40 gms** with a value cap of **₹ 1,00,000.**

3.4.3 Transfer of residence [Rule 6]

A person, who –

- Is **engaged in a profession abroad**, or
- Is **transferring his residence to India**,

will be **allowed duty free clearance of articles on his return** in the following manner –

Duration of stay abroad	Articles allowed free of duty	Conditions
From 3 months up to 6 months	• Personal and household articles, • Other than those mentioned in Annexure I or Annexure II • But including articles mentioned in Annexure III up to an aggregate value of ₹ 60,000.	Indian passenger
From 6 months up to 1 year	• Personal and household articles, • Other than those mentioned in Annexure I or Annexure II • But including articles mentioned in Annexure III, up to an aggregate value of ₹ 1,00,000.	Indian passenger
Minimum Stay of 1 year during the preceding 2 years	• Personal and household articles, • Other than those mentioned in Annexure I or Annexure II • But including articles mentioned in Annexure III up to an aggregate value of ₹ 2,00,000.	The Indian passenger should not have availed this concession in the preceding 3 years.
Minimum stay of 2 years or more	• Personal and house household articles, • Other than those listed at Annexure I or Annexure II • But including articles mentioned in Annexure III up to an aggregate value of ₹ 5,00,000	i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence. The shortfall of up to 2 months in stay abroad can be condoned by DC/AC of Customs if the early return is on account of – ▪ Terminal leave or vacation, or ▪ Any other special circumstances. ii) Total stay in India on short visit during the 2 preceding years should not exceed 6 months. The Principal CCus./ CCus. may condone short visits in excess of 6 months in special circumstances.

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		iii) Passenger has not availed this concession in the preceding 3 years.

3.4.4 Currency [Rule 7]

The import and export of currency under these rules shall be **governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015,** and the notifications issued thereunder.

3.4.5 Unaccompanied Baggage [Rule 8]

These rules shall apply to unaccompanied baggage except when they are specifically excluded, subject to following conditions:

- The said unaccompanied baggage had been in **possession, abroad, of the passenger** and is or within such time as the AC/DC may allow.
- The said unaccompanied baggage **may land in India up to 2 months before the arrival of the passenger** or within such other period, not exceeding 1 year, as the AC/DC may allow.

3.4.6 Crew baggage [Rule 9]

a) These baggage rules are **also applicable to the members of the crew engaged in foreign going conveyance** for importation of their baggage when they are finally paid off on termination of their engagement.

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b) Other crew members are **allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding ₹ 1500.**

Annexure I	Annexure II	Annexure III
•Firearms. •Catridges of firearms exceeding 50. •Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms. •Alcoholic liquor/ wines in excess of 2 ltrs. •Gold or silver in any form other than ornaments. •Flat panel TV.	•Colour Television. •Video Home Theatre System. •Dish Washer. •Domestic Refrigerators of capacity equal to or more than 300 ltrs. •Deep Freezer. •Video camera or the combination thereof with one or more of the following goods, •Television receiver •sound recording or reproducing apparatus •video reproducing apparatus. •Cinematographic films of 35 mm and above. •Gold or silver in any form other than ornaments.	•Video Cassette Recorder or VC Player or Video Television Receiver or VC Disk Player. •Digital Video Discplayer. •Music System. •Air-Conditioner. •Microwave Oven. •Word Processing Machine. •Fax Machine. •Portable Photocopying Machine. •Washing Machine. •Electrical or LPG Cooking Range. • PC (Desktop Computer) •Laptop (Note book Computer) • Domestic Refrigerators of capacity up to 300 litres or its equivalent.

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3.5 Temporary detention of Baggage [Section 80]

In the following cases, **a passenger will deposit the articles with the customs authorities and take it back at the port of his departure –**

- Passenger has brought in an **article which is prohibited** and may opt to re-export it or take it with him when he leaves the country.
- Passenger may opt not to take a particular article into the town if the **duty is heavy.**

The **declaration of goods brought in u/s 77** is an absolute necessity to claim the benefit u/s 80. In that case the goods are liable for confiscation.

If the article is not able to collect the article at the time of his leaving India – The article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name.

3.6 Regulations in respect of Baggage [Section 81]

The Board may make regulations in the following matters –

a) Providing for the **manner of declaring the contents of any baggage,**

b) Providing for the **custody, examination, assessment to duty and clearance of baggage,**

c) Providing for **transit or transhipment of baggage** from one customs station to another or to a place outside India.

In exercise of these powers, the **form of the baggage declaration** has been prescribed and standardized. In the **Customs Baggage Declaration Regulations, 2013**, the baggage **declaration will have to be filed only by those passengers who come to India and carry dutiable or prohibited goods or have anything to declare.**

Domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form.

ILLUSTRATIONS

Illustration 1 (Baggage Rules I)

After visiting USA, Mrs. and Mr. X, brought to India a laptop computer valued at Rs.80,000, used personal effects valued at Rs.90,000 and a personal computer for Rs.52,000. What is the customs duty payable?

Illustration 2 (Baggage Rules II)

Mrs. and Mr. Kapoor visited Germany and brought following goods while returning to India on 8th April, 2016.

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- Personal Effects like clothes etc valued at Rs.35,000
- Personal computer bought for Rs.47,000
- Laptop computer bought for Rs.95,000
- 2 litres of liquor bought for Rs.1,600
- A new camera bought for Rs.34,500

What is the amount of Customs duty payable?

Illustration 3 (Baggage Rules 1)

An Indian resident goes to Nepal on tour. He purchases

- Colour TV of Rs.18,000.
- Laptop of Rs.79,000.
- Hair dryer Rs.22,000 and brings the same to India.

What is the duty if he returns by

- Air
- Land route

Illustration 4 (Baggage Rules I)

Mr Samuel, a US resident, aged 35 years has come to India on a tourist Visa for a month-long vacation. He carries with him as a part of baggage the following items

- Travel souvenirs - Rs.85,000
- Other articles carried on in person – Rs.1,50,000
- 80 cigarettes of Rs.100 each – Rs.8,000 [Annexure I]
- 30 Cartridges of fire arms of Rs.500 each – Rs.15,000 [Annexure I]
- 1 litre wine – Rs.15,000 [Annexure I]

With reference to Baggage rules, determine whether Mr Samuel will be required to pay any Customs Duty.

Illustration 5 (Baggage Rules II)

Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2018. His wife also joined him in London after three months. The following details are submitted by them with the Customs authorities on their return to India on 15.04.2019:

- used personal effects worth Rs. 80,000,
- 2 music systems each worth Rs. 50,000,
- the jewellery brought by Mr. Sujoy worth Rs. 48,000 [20 grams] and the jewellery brought by his wife worth Rs. 96,000 [40 grams]

With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Sujoy will be required to pay any customs duty?

Illustration 6 (Baggage Rules III)

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After visiting USA for a month, Mrs. and Mr. Subrahmanyam (Indian residents aged 35 and 40 years respectively) brought to India

- a laptop computer valued at Rs. 60,000,
- used personal effects valued at Rs. 1,20,000 and
- a personal computer for Rs. 54,000.

Calculate the customs duty payable?

Illustration 7 (Baggage Rules IV)

Mr. Iyer, an Indian entrepreneur went to London to explore new business opportunities on 7th April,2016. 35550 His wife also joined him in London after three months.

The following details are submitted by them with the Customs authorities on their return to India on 21.04.2017:

- used personal effects worth Rs. 90,000,
- 2 music systems each worth Rs. 50,000,
- the jewellery brought by Mr. Sujoy worth Rs. 49,500 [20 grams] and the jewellery brought by his wife worth Rs. 97,500 [40 grams]

With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Iyer will be required to pay any customs duty?

Illustration 8 (Baggage Rules V)

Mrs. X an Indian resident, who as on a visit to China returned after 3 months. She as carrying with her the following items:

- used personal effects worth Rs. 75,000,
- Laptop computers worth Rs. 60,000,
- Jewellery [25 grams] purchased in China Rs. 75,000
- Music system Rs. 50,000

Compute customs duty payable by Mrs. X with reference to Baggage Rules, 2016

Illustration 9 (Baggage Rules VI)

Mr. X, an Indian resident and a doctor by profession who was engaged in his profession in Germany for 4 months, brought with him the following items on his return to India –

a) Used personal effects like cloths etc. of Rs. 50,000;
b) a video cassette recorder of Rs. 25,000;
c) Jewellery of Rs. 35,000;
d) Used household articles of Rs. 20,000;
e) His professional equipment like stethoscope and other surgical instruments worth Rs.24,000;
f) A Laptop computer worth Rs. 1,20,000
g) LCD TV- Rs.41,000

Determine the duty payable by him. 1FIN by IndigoLearn

10. FOREIGN TRADE POLICY

Contents

- Legislation governing FTP.
- Salient features of FTP.
- Administration of FTP.
- Basic concepts relating to import and export of goods under FTP.
- Authorised Economic Operator (AEO)
- Status holders and their privileges.
- Understand the various duty exemption and remission schemes.
- EPCG scheme and export obligation.
- EOU, EHTP, STP, BTP schemes.
- Deemed export and benefits.

1. INTRODUCTION

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Power to Formulate FTP → Section 5 of FT (D & R) Act,` 1992

- Empowers Central Government to the make provisions for development and regulation of foreign trade
- Empowers Central Government to formulate and announce by notification in Official gazette, the Foreign Trade Policy (FTP) and also amend the same by issuing a notification.

[FT(D&R) Act, 1992] – Foreign Trade (Development and Regulations) Act, 1992

- Came in to Force on ***01.04.2023***
- Continue to be in operation unless otherwise specified or amended.
- Any License/ Authorisation/ Certificate/Scrip/ issued before commencement of FTP 2023 shall continue to be valid

2. AUTHORISATION

- It means "permission for import or export of goods and services" in terms of FT (D&R) Act, 1992.
- DGFT issues authorization for import or export.
- Decision of DGFT is final and binding in respect of any authorization issued under the FTP.

3. SALIENT FEATURES OF FTP

1. Export-Import is free unless specifically regulated by the provisions of the FTP.
2. Export and Import goods are broadly categorized as
   a. Free (i.e. general goods freely import or export without any authorization).
   b. Restricted (i.e. goods allowed to import or export only with authorization).
   c. Prohibited (i.e. goods are not allowed to import or export)
3. Exclusive trading through State Trading Enterprises (STEs)
4. There are restrictions on exports and imports for various strategic, health, and other reasons.
5. Exports are promoted through various promotional schemes.
6. There should be no taxes on exports.
7. Capital goods can be imported at NIL duty for the purpose of exports under the scheme of Export Promotion Capital Goods (EPCG) Scheme.
8. EOUÕS and SEZ units are exempted from payment of taxes.\
9. Deemed exports concept introduced.
10. Duty credit scrips schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services

4. STATE TRADING ENTERPRISES

- State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import.
- Any good, import or export of which is granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS).
- Examples: FCI, ONGC

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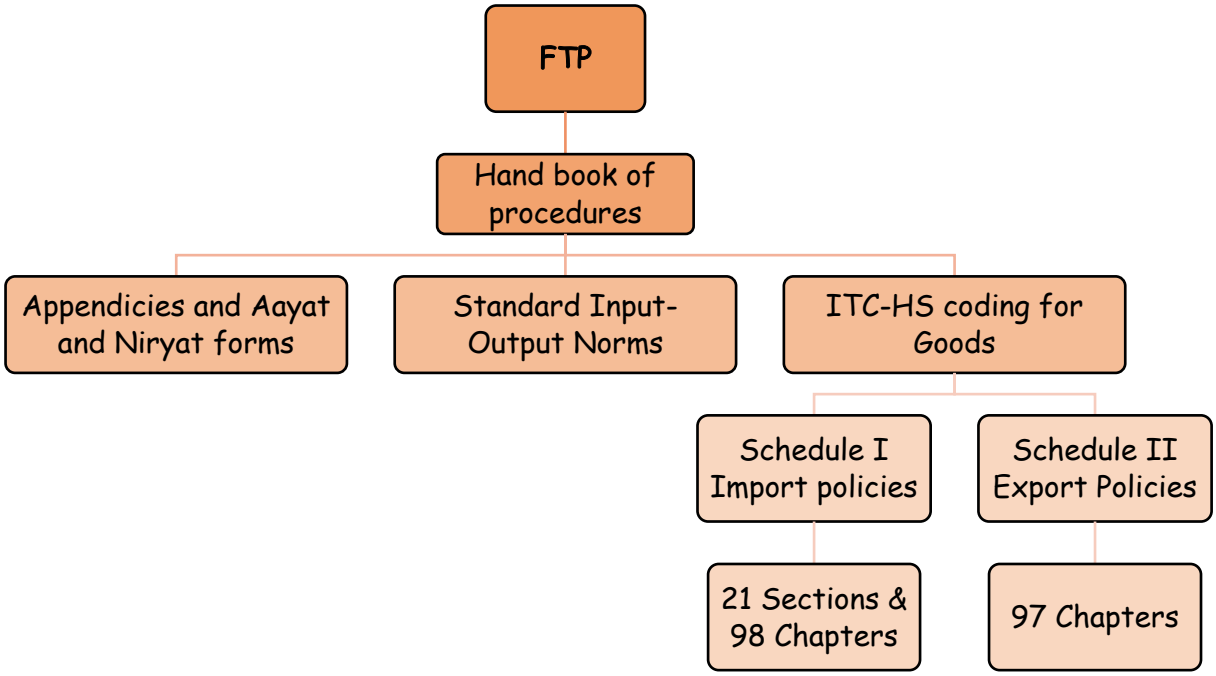
5. SCOPE OF FTP

1. Legal Framework and Trade Facilitation
2. General Provisions Regarding Imports and Exports
3. Developing Districts as Export Hubs
4. Duty Exemption / Remission Schemes
5. ***Export Promotion Capital Goods (EPCG) Scheme***
6. ***Export Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs)*** and ***Bio-Technology Parks (BTPs)***
7. Deemed Exports
8. Quality Complaints and Trade Disputes
9. Promoting Cross Border Trade in Digital Economy
10. ***SCOMET: Special Chemicals, Organisms, Materials, Equipment and Technologies***
11. Definitions

6. COMPONENTS OF FOREIGH TRADE POLICY



7. IMPORTER – EXPORTER CODE (IEC)

- Mandatory to Export any goods out of India or to Import any goods into India unless specifically exempted.
- It is a unique 10-digit Alpha numeric code issued by DGFT
- Pan is a pre-requisite
- Only one IEC will be issued with a single PAN
- DGFT has decided to use PAN as IEC number.
- IEC details have to be electronically updated every year, even if there are no changes; failing which it will be de-activated till updating.

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8. MANDATORY DOCUMENTS FOR EXPORT/IMPORT FOODS INTO INDIA

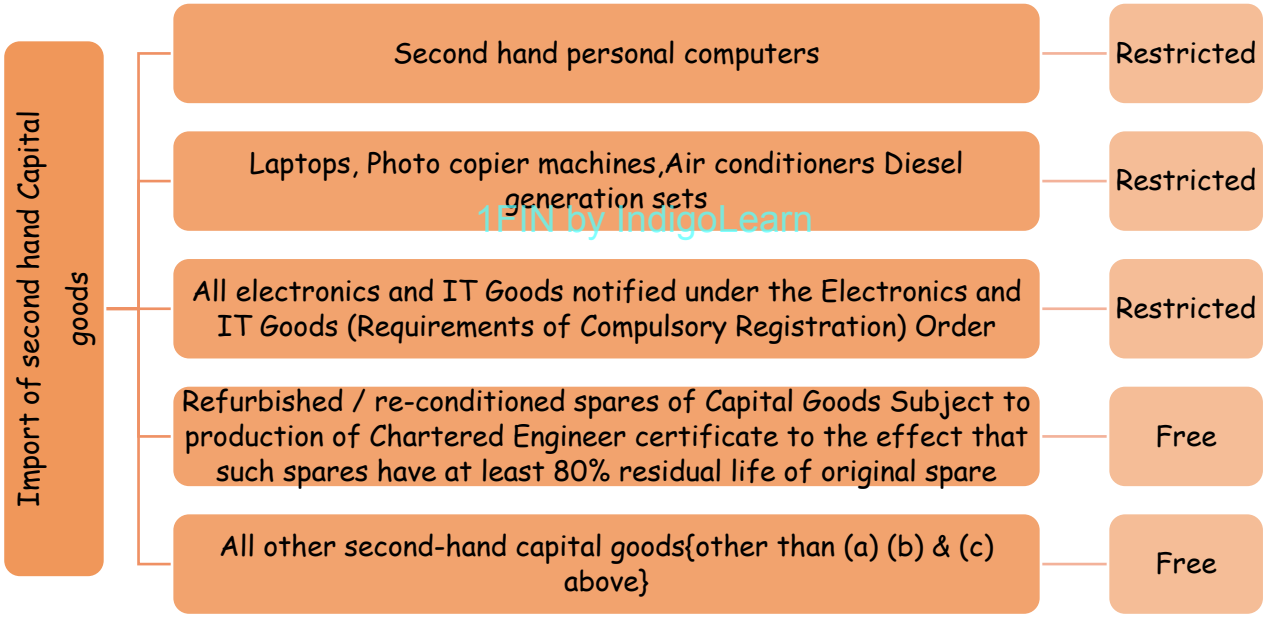
Export	Import
•Bill of lading/Airway bill/ Lorry Bill/ Postal Bill •Commercial invoice cum packing list •Shipping bill/ Bill of export	•Bill of lading/Airway bill/ Lorry Bill/ Postal Bill •Commercial invoice cum packing list •Bill of entry

9. PROVISIONS RELATING TO IMPORT OF GOODS

- Goods which are importable without any restriction may be imported by any person. However, if such goods are restricted then actual user alone can import unless exempted by DGFT.
- ***Import of gifts (Including those purchased from E commerce portals):***
    - Through post or courier where Customs clearance is sought as gifts, is prohibited except for life saving drugs/ medicines and Rakhi (but not gifts related to Rakhi).

- Import of goods as gifts with payment of full applicable duties is allowed.

- ***Import of samples:***
  - Import of samples of even restricted goods without authorization is allowed.
  - Requires authorization only in case defense/Security Items, Veg-seeds, bees & new drugs
  - Duty free Import of samples up to RS 3,00,000 can be made by all the exporters without payment of duty, Passenger baggage
- Scrap/Waste/remnant generated during manufacturing activity of an SEZ shall be allowed to dispose in DTA freely on payment of applicable customs duty without an Authorization.



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- Capital goods, components, parts & accessories can be sent abroad for repairs, improvisation, testing and can be re-imported without reauthorization unless they are restricted goods.
- ***Import of goods used in projects abroad:***

  Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.
- ***Import of Prototypes:***

  Import of new / second hand prototypes / second hand samples may be allowed on payment of duty without an Authorisation to an Actual User (industrial) engaged in production of or having industrial license / letter of intent for research in item for which prototype is

sought for product development or research, as the case may be, upon a self- declaration to that effect, to the satisfaction of Customs authorities.

- ***Import of Metallic Waste and Scrap:***

  Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.
- Import of Capitals goods under lease financing is freely permitted
- Goods for import into India can be sold on the high seas, subject to FTP/other laws in force.
- Where goods imported duty free, imported shall execute Bond, LUT or Bank guarantee with customs before clearance.

  Merchanting trade means shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This is allowed, subject to RBI guidelines

10. PENAL ACTION ABD PLACING OF AN ENTITY IN A DENIED ENTITY LIST (DEL)

- In following situations, a person shall be liable to penal action under FT (D&R) Act and rules and orders made thereunder, FTP and any other law for time being in force:
- Denied Entity List (DEL):
- A firm may be placed under DEL, by the concerned Regional Authority (RA) of
  i. the DGFT. In such a case firm may be refused grant or renewal of a licence/ authorisation/certificate/scrip/any instrument bestowing financial/fiscal benefits, and
  ii. all new licences, authorisations, scrips, certificates, instruments etc. will be blocked from printing/ issue/ renewal.

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11. PROVISIONS RELATED TO EXPORT GOODS

Free Exports

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC(HS).

Benefits for Supporting Manufacturers:

Supporting manufacturer is one who manufactures goods/products or any part/ accessories/ components of a good/ product for a merchant exporter/ manufacturer exporter under a specific Authorisation

For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents Third Party Exports:

Third-party exports means exports made by an exporter/manufacturer on behalf of another exporter(s).

In such cases, export documents such as shipping bills shall indicate names of both Bank Realisation

Certificate (BRC), Self-Declaration Form (SDF), export order and invoice should be in the name of third-party exporter.

Export of Samples

Exports of bonafide trade and technical samples of goods of freely importable items are allowed without any limit.

Export of Gifts:

Goods including edible items, of value not exceeding Rs.5,00,000/- in a licensing year, may be exported as a gift. Even goods restricted can be exported without Authorisation.

Export of Passenger Baggage:

Bona-fide personal baggage may be exported

However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorisation. Samples that freely exportable can be exported as part of passenger baggage without Authrisation. Authorisation will be required for restricted items

12. PAYMENTS AND RECEIPTS ON IMPORTS/EXPORTS

- Export proceeds shall be realized in freely convertible currency, Documents can be in any currency
- Export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account
- If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits
- ***Export Credit Agencies (ECAs)***: ECAs provide financial support to exporters. They support exports by insurance, guarantee and also direct lending.

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13. EXPORT PROMOTION COUNCILS

- Set up to promote and develop Indian exports.
- Each Council is responsible for promotion of a particular group of products/ projects/services.
- EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC).
- RCMC is required to be furnished by any person, applying for an Authorisation to import/ export under the FTP
- Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different Preferential Trade Agreements

14. AUTHORISED ECONIMOC OPERATOR (AEO) PROGRAMME

Authorised Economic Operator (AEO) programme' has been developed by Indian Customs to enable business involved in the interna6tional trade to reap the following benefits:

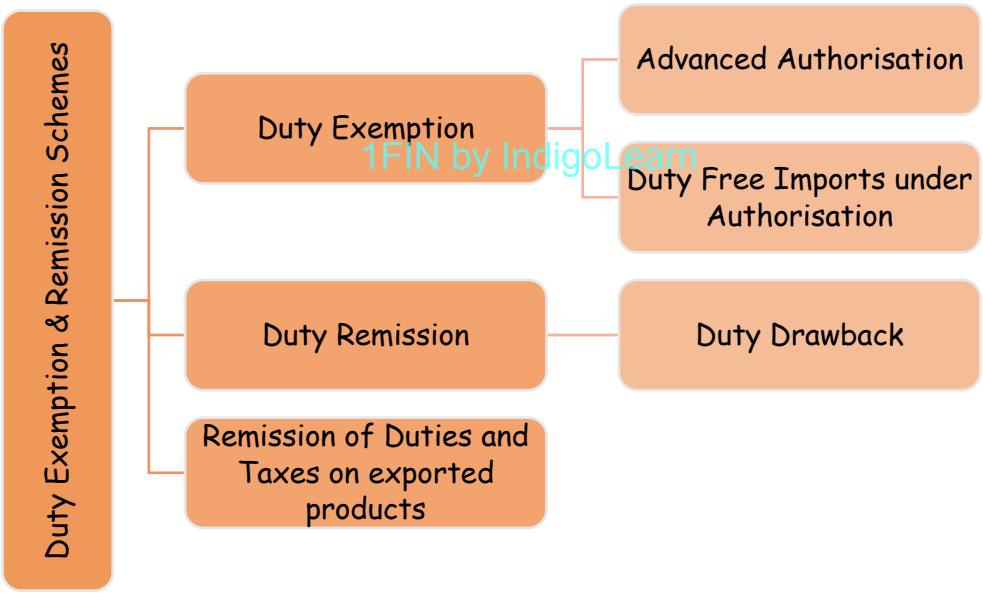
i. Secure supply chain from point of export to import;
ii. Ability to demonstrate compliance with security standards when contracting to supply overseas importers /exporters;
iii. Enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries;
iv. Minimal disruption to ßow of cargo after a security related disruption;
v. Reduction in dwell time and related costs; and
vi. Customs advice / assistance if trade faces unexpected issues with Customs of countries with which India have MRA.

15. TOWNS OF EXPORT EXCELLENCE (TEE)

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE.

They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

16. DUTY EXEMPTION AND REMISSION SCHEMES



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17. ADVANCE AUTHORIZATION SCHEME

- Advance Authorization scheme is a facility to import Inputs to be used/required in the manufacture of Export product without payment of Import duty (Excluding IGST and Cess) subject to 15 % value addition
- Advance Authorization can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer(s)
- AA can also be issued for making
    - Physical exports (including export to SEZ) by Authorisation holder
    - Intermediate supply
    - Supplies made to specified categories of deemed exports

- Supply of 'stores' on board of foreign going vessel/aircraft provided there is specific SION in respect of items supplied

18. VALIDITY PERIOD OF AUTHORIZATION

- Validity period for import of Advance Authorisation shall be 12 months from the date of issue of Authorisation.
- For deemed exports Contract duration of project execution or 12 months from authorization earlier

19. EXPORT OBLIGATION (EO) AND RELIASATION

- EO needs to be fulfilled within 18 months from Date of Authorization or as notified
- EO shall be realized in convertible Foreign currency, export to Export to SEZ Developers/Co Developers can be realised in Indian rupees as well.

20. ITEMS THAT CAN BE IMPORTED DUTY FREE AGAINST ADVANCE AUTHORISATION

- Inputs, which are physically incorporated in export product (making normal allowance for wastage)
- Fuel, oil, catalysts which are consumed/utilised to obtain export product
- Mandatory spares which are required to be exported/supplied with resultant product permitted upto 10% of CIF value of Authorization.
- Specified spices only when used for activities like crushing/ grinding/sterilization/ manufacture of oils or oleoresins and not for simply cleaning, grading, re-packing etc.
- However, items reserved for imports by STEs cannot be imported against advance authorization.

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21. CALCULATION OF VALUE ADDITION (EXCEPT FOR GEM AND JEWELLERY SECTOR)

VA = [(A-B) x 100]/B

A = FOB value of export realised/FOR value of supply received.

B = CIF value of inputs covered by authorisation plus any other imported materials used on which benefit of duty drawback (DBK) is claimed or intended to be claimed.

If some items are supplied free of cost by foreign buyer, its notional valuewill be added in the CIF value of import and FOB value of export for purpose of calculating value addition. Exports to SEZ Developers/ Co- developers, irrespective of currency of realization, would also be covered.

22. ENTITLEMENT OF AA IN TERMS OF CIF VALUE OF IMPORTS

- 300% of the FOB value of physical exports and / or Entitlement of AA in terms of CIF value of
- imports and / or FOR value of deemed export in preceding financial year Or 1 Crore
- Whichever is higher

23. BASICS OF AA (QUANTITY & VALUE)

- As per Standard Input Output Norms (SION) notified (or)
- On the basis of self-declaration where no SION/adhoc norms have been notified / published (or)
- Applicant specific prior fixation of norm by the Norms Committee (or)
- On the basis of self-ratification Scheme no SION/valid Adhoc Norms for an export product

24. WHAT IS SION?

- SION are standard norms which define the number of input(s) required to manufacture unit of output for export purpose.
- Notified by DGFT on basis of recommendation of Norms Committee

25. ACTUAL USER CONDITION

- Advance Authorization and/ or materials imported thereunder will be with actual user condition.
- It will not be transferable even after completion of export obligation.
- However, Authorization holder will have an option to dispose of product manufactured out of duty-free inputs in DTA once export obligation is completed.

26. DOMESTIC SOURCING OF INPUTS

- Holder of AA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/Invalidation letter/ Back to Back Inland Letter of Credit.
- However, AA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

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27. MAINTENANCE OF PROPER ACCOUNTS FOR AUTHORIZATIONS

- Every AA holder shall maintain a true and proper account of consumption and utilization of duty free imported / domestically procured inputs against each authorisation as per the prescribed formats
- Such records shall be preserved for a period of at least three years from the dateof redemption
- While doing export/supply, applicant shall indicate authorisation number on the export documents.

28. REDEMPTION OR CLOSURE OF ADVANCE AUTHORIZATION

- On completion of exports and imports and other conditions as specified under the advance authorisation, the Authorisation holder shall submit application in the prescribed form alongwith supporting documents for redemption of the authorization
- Regional Authority after duly verifying grant issue EODC / Redemption Certificate
- If goods are imported against advance authorization but export obligation is not fulfilled, duty and interest is payable.

29. DUTY FREE IMPORTS UNDER AUTHORIZATION

- Post Export facility to Import units used in manufacture of export products without payment of BCD
- Export shall be complete within 12 months from the date of online filing of application. And generation of file number
- Value addition to be made for 20 % (Except for physical exports for which payment not received in Conv Forex)
- Authorizations are issued only to products covered under SION
- Exempted only from payment of BCD
- Applicant shall file an online application before regional authority before Import
- Export proceeds shall be realized in Convertible Forex
- After realization of export proceeds, request for issue of transferable DFIA can be made within a period of
    - 12 Months from date of export or
    - 6 Months from date of realization of export proceeds (Whichever is later)
- No DFIA shall be issued for an export product where SION prescribes actual user condition for any input.
- Holder of DFIA can procure inputs from indigenous manufacturer against Advance release order. DFIA holder may obtain supplies from EOU/EHTP/BTP/STP without obtaining ARO.

Particulars	Advance Authorization	Duty Free Imports under Authorization
About	Is a facility to import Inputs to be used/required in the manufacture of Export product without payment of Import duty (Excluding IGST and Cess) subject to 15 % value addition	It is a post export facility to import inputs used in manufacture of export products without payment of BCD
Export Obligation	EO needs to be fulfilled within 18 months from Date of Authorization	Export shall be completed within 12 months from date of online application
Basis (Qty & value)	SION / Self Declaration / Applicant Specific prior fixation of norm/ On basis of self-ratification scheme	Issued only if SION is notified.
Transferable	No	Transferable
Value Addition	Generally, ≥ 15 % (Except Physical exports not realized in FCC) Tea ≥ 50%	≥ 20 %
Available even to	Jem and Jewellery Sector	Not Available
Exemption	BCD, Adtnl Customs duty, IGST, comp Cess	Only BCD

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30. REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS

RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters

This scheme provides for remission of the amount in the form of duty credit scrip credited in an exporter's ledger account with customs.

The support under RoDTEP scheme for export of products manufactured by DTA units is available till 30-09-2025.

Objective of the Scheme:

The objective of the scheme is to refund, currently unrefunded:

i. Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in production of the exported product, and
ii. Such indirect duties/taxes/levies in respect of distribution of exported products.

Salient features of the scheme:

- It seeks to refund to exporters the embedded Central, State and local duties/taxes that were so far not being rebated/refunded.
- Duty credit is issued –
  - in lieu of remission of any duty/tax/levy chargeable on any material used in the manufacture/processing of goods or for carrying out any operation on such goods in India that are exported, where such duty/ tax /levy is not exempted/remitted/credited under any other Scheme;
  - against export of notified goods under FTP.
- Value of the said goods for calculation of duty credit to be allowed under the scheme shall be the declared export FOB value of the said goods or up to 1.5 times the market price of the said goods, whichever is less.
- The refund in the form duty credits would be credited in the electronic credit ledger in the customs automated account of the exporter.
- Such duty credit shall be used only to pay basic customs duty on imported goods.
- The duty credit scrips are freely transferable, i.e. credits can be transferred to other importers.
- The rebate under the scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

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31. ELIGIBILITY FOR THE SCHEME

All exporters of eligible RoDTEP export items are eligible for the scheme. Reward under the scheme.

32. REWARD

Rebate would be granted to eligible exporters at a notified rate as a % of FOB value with a value cap per unit of the eligible exported product, wherever required, on export of items. However, for certain export items, a fixed quantum of rebate amount per unit may also be notified.

Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in case of non-receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999.

Ineligible supplies/ items/ categories under Ro DTEP

- Export of imported goods in same or substantially the same form
- Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India
- Export products which are subject to minimum export price or export duty
- Products which are restricted/prohibited under FTP
- Supplies of products manufactured by DTA units to SEZ/FTWZ units.
- Products manufactured in EHTP and BTP
- Goods which have been taken into use after manufacture
- Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports
- Products manufactured or exported availing the benefit of Notification No. 32/1997 Cus. dated 01.04.1974

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33. DEEMED EXPORTS

- Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act
- Goods for which claim of duty credit is not filed in a shipping bill or bill of export in the customs automated system
- Products manufactured or exported in discharge of EO against an AA/DFIA/Special AA issued under a duty exemption scheme of relevant FTP
- Products manufactured/exported by a unit licensed as 100% EOU in terms of the provisions of FTP or by any of the units situated in FTZ/EPZ/SEZ
- EPCG SCHEME (Export Promotion Capital Goods Scheme)
- EPCG scheme allows import of capital goods without payment of duty for pre-production, production, post production.
- Capital goods imported under EPCG authorisation are exempted from IGST and compensation cess as well
- Authorisation holder can procure capital goods indigenously (with in India) as well.
- Authorisation is valid for 18 months from the date of issue of its authorisation.
- Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.
- Export proceeds shall be realized in freely convertible currency except for deemed exports plies.
- Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit

- Export to SEZ Developers / Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees

34. CAPITAL GOODS FOR THE PURPOSE OF EPCG SHALL INCLUDES

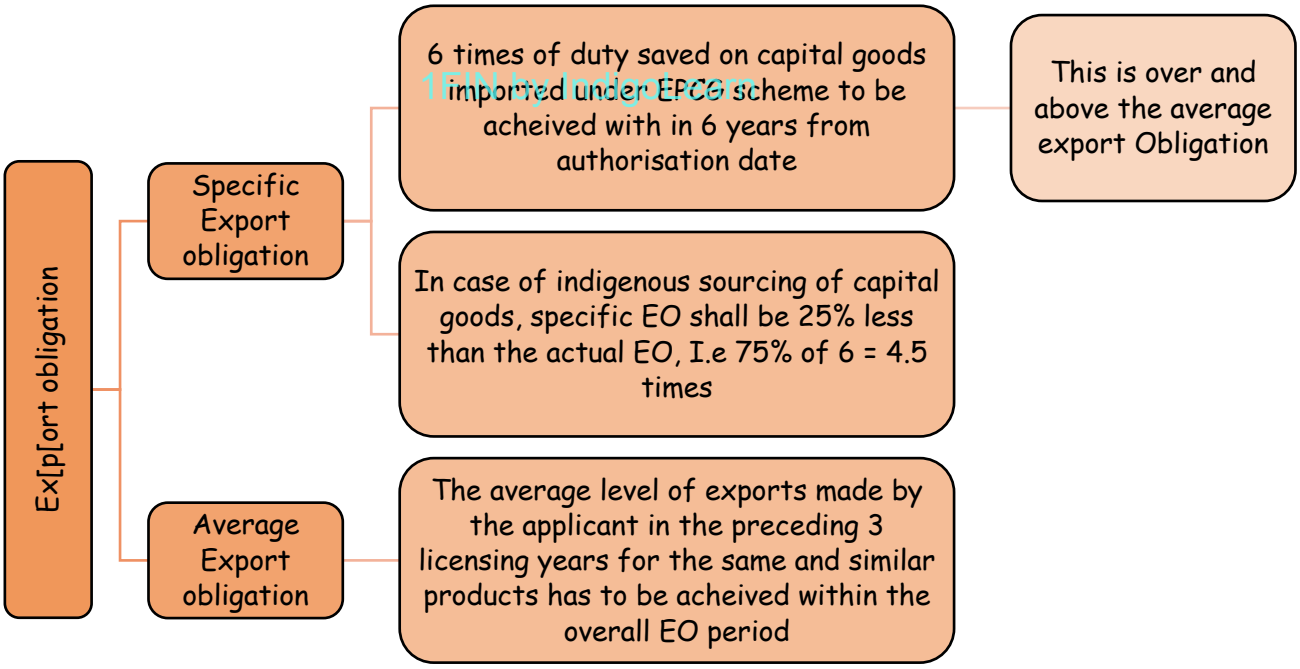
- Capital Goods including capital goods in CKD/SKD condition
- Computer systems and software which are a part of the Capital Goods being imported
- Spares, moulds, dies, jigs, fixtures, tools & refractories
- Catalysts for initial charge plus one subsequent charge
- Capital goods for Project Imports notified by CBIC

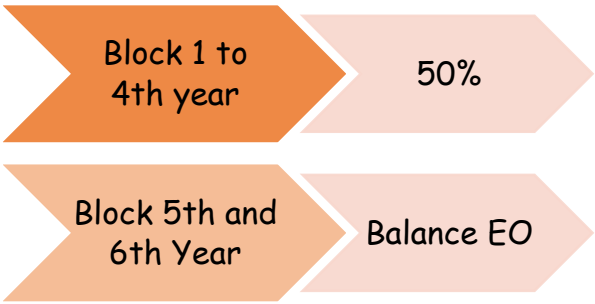
35. EXPORTERS ELIGIBLE FOR EPCG SCHEME

- Manufacturer exporters with or without supporting manufacturer(s),
- Merchant exporters tied to supporting manufacturer(s), and
- Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions

36. EXPORT OBLIGATION

- Export obligation means obligation to export product(s) covered by Authorisation in terms of quantity or value or both, as may be prescribed.





37. OTHER CONDITIONS

- Shipments under Advance Authorisation, DFIA, Drawback scheme, or reward schemes; would also be counted for fulfilment of EO under EPCG Scheme.
- EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.
- Both physical exports as well as specified deemed exports shall alsobe counted towards fulfilment of export obligation.
- EPCG Authorisation holder shall submit to RA concerned by 30thApril of every year, report on fulfilment of export obligation.
- Every EPCG authorisation holder shall maintain, for a period of 2 years from date of redemption, a true and proper account of exports/ supplies made and services rendered towards fulfilment of export obligation.
- Applicant shall indicate authorisation number on the export documents while doing exports.
- On completion of exports and imports and other conditions as specified under the EPCG authorisation, the Authorisation holder shall submit application in the prescribed form along with supporting documents for redemption of the authorisation under the prescribed format
- On being satisfied, RA concerned shall issue a EODC / Redemption Certificate to the EPCG authorisation holder and forward a copy to Customs Authorities indicating the same details of proof of fulfilment of EO

38. INCENTIVE FOR EARLY FULFILMENT OF EXPORT OBLIGATION

- Importer fulfilled the export obligation as specified below with in half or less than half of the original export obligation period
    - 75 % or more of specific export obligation
    - 100 % of Average export obligation

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39. STATUS HOLDER

- Status Holders are businessleaders who have excelled in international trade and have successfully contributed to country's foreign trade.
- All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder.
- An applicant shall be categorized as status holder upon achieving export performance during current and previous three financial years*
- However, for Gems & Jewellery Sector, the performance during the current and previous two financial years shall be considered.

Status Category	*Export Performance*
One-star Export house	3 million USD
Two-star Export house	15 million USD
Three-star Export house	50 million USD
Four-star Export house	200 million USD
Five-star Export house	800 million USD

- Export performance will be counted on the basis of FOB value of export earnings in free foreign currencies.
- For deemed export, FOR value of exports in Indian Rupees shall be converted in US$ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.
- For granting status, export performance is necessary in at least 2 out of 4 years
- Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.
- Exports made on re-export basis shall not be counted for recognition.
- Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- For calculating export performance for grant of One Star Export House Status category, exports by IEC holders under the following categories shallbe granted double weightage:
    - Micro, Small & Medium Enterprises (MSME) as defined in Micro, Small& Medium Enterprises Development (MSMED) Act 2006
    - Manufacturing units having ISO/BIS
    - Units located in North Eastern States including Sikkim and Jammu & Kashmir
    - Units located in Agri Export Zones

40. PRIVILEGES OF STATUS HOLDERS: STATUS HOLDERS ARE GRANTED CERTAIN BENEFITS LIKE

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a. Authorisation and custom clearances for both imports and exports on self- declaration basis.
b. Fixation of Input Output Norms (SION) on priority i.e. within 60 days by Norms Committee.
c. Exemption from compulsory negotiation of documents through banks. The remittance/ receipts, however, would continue to be received through banking channels.
d. Exemption from furnishing of Bank Guarantee in Schemes under FTP.
e. Two Star Export Houses and above are permitted to establish export warehouses.
f. Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under different preferential trading agreements (PTA), Free Trade Agreements (FTAs), Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA).
g. Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to a certain annual limit specified for each sector separately.

41. EOU, EHTP, STP & BTP SCHEMES

Units under Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme:

- Can export their entire production of goods and services (except permissible sales in DTA), and

- can import inputs and capital goods without payment of customs duty.

42. GOVERNANCE AND ADMINISTRATION

- STP/EHTP/BTP schemes are similar to EOU schemes and provisions are more/ less identical.
- EOU scheme is administered by Ministry of Commerce and Industry, while STP/EHTP/BTP schemes are administered by their respective administrative ministries.

Eligibility:

- Such units may be set up for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture.
- Trading units are not covered under these schemes.
- Only projects having a minimum investment of Rs 1 crore in plant & machinery shall be considered for establishment as EOUs. However, Board of Approvals (BoA) may allow establishment of EOUs with a lower investment criteria also
- Approval for setting up of units under EOU scheme shall be granted by the Units Approval Committee within 15 days as per prescribed criteria. In other cases, approval may be granted by Board of Approval (BoA) set up for this purpose.
- Letter of Permission validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA)

43. NET FOREIGN EXCHANGE EARNINGS

- EOU/ EHTP/ STP/ BTP unit must be a positive net foreign exchangeearner.
- NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.
- Items of manufacture for export specified in LoP/LoI alone shall be taken into
    - account for calculation of NFE
    - Positive NFE = A - B > 0 'A' is FOB value of exports;
    - 'B' is CIF value of imported inputs, capital goods and value of all payments

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44.1 - Sales to DTA units

Up to 50% of FOB value of exports (including sales made to SEZ unit from Foreign Exchange Account of such unit), subject to fulfillment of positive NFE, on payment of concessional duties.

In case of units manufacturing and exporting more than one product, sale of any of these products into DTA, up to 90% of FOB value of export of the specific products is permitted, provided total DTA sales does not exceed the overall entitlement of 50% of FOB value of exports for the unit. In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year (2 years for pharmaceutical units)

45. SPECIAL ECONOMIC ZONES

- Are like a separate island within territory of India.
- SEZs are projected as duty free area for the purpose of trade, operation, duty and tariffs.

- Goods and services coming to SEZ units from domestic tariff area are treated as exports from India and goods and services rendered from SEZ to the DTA are treated as import into India.

45.1 - Incentives to Special Economic Zones:

1. Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units.
2. Single window clearance for Central and State level approvals.
3. Exemption from State sales tax and other levies as extended by the respective State Governments.
4. "In order to give a boost to exports from SEZs, government has now decided to extend benefits of both the reward schemes (MEIS and SEIS) to units located in SEZs.
5. SEZs have been exempted from payment of IGST on imports. Supplies to SEZs by DTA units also exempted from IGST (i.e. zero-rated supply

Deemed Exports:

Goods manufactured in India and supplies from DTA to EOU, EHTP, STP & BTP units will be regarded as deemed exports and DTA supplier shall be eligible for export incentives.

Deemed Exports for the purpose of GST

It would include only the supplies notified under section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

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We will restrict our discussion to 'Deemed exports for the purpose for FTP' inthis chapter. Deemed exports broadly cover three areas.

a. Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.
b. Supplies to projects/ purposes that involve international competitive bidding
c. Supplies to infrastructure projects of national importance

Supply by manufacturer	Supply by main/sub-contractors(s)
Supply of goods against Advance Authorisation/Advance Authorisation for Annual Requirement/ DFIA	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
Supply of goods to units located in EOU/STP/BTP/EHTP	Supply of goods to any project where import is permitted at zero customs duty as per customs
Supply of capital goods against EPCG authorisation	Supply of goods to mega power projects against International Competitive Bidding
	Supply to goods to UN or international organisations

	Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

Benefits for Deemed Exports

Deemed exports shall be eligible for any/ all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

a. Advance Authorisation/ Advance Authorisation for Annual requirement/DFIA
b. Deemed Export Drawback
c. Refund of terminal excise duty for excisable goods mentioned in Schedule 4of Central Excise Act 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.

46. FTP - TRADE FACILITATION MEASURES (AMENDMENT)

The Government now has a *structured, optional consultation mechanism* to involve stakeholders in making or amending the Foreign Trade Policy — but it remains free to accept, reject, or ignore feedback, without any legal obligation to explain its reasons (except where it chooses to, on a best-effort basis).

This amendment aims to:

- Improve **transparency and inclusiveness** in policy-making,
- Allow **industry participation** in shaping trade rules,
- Build **trust and cooperation** between government and trade community,
- But **without binding** the government or restricting its policy-making powers.

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Consultation with stakeholders

The **Central Government may** (not must) **seek views/suggestions/comments/feedback** from:

- Importers
- Exporters
- Industry experts
- Any other relevant stakeholders

During:

- **Formulation of a new FTP**
- **Amendment or incorporation** of specific provisions in the existing FTP

Ideally, within a **30-day period** may be provided to stakeholders to submit their feedback.

The Government **still retains full power** to:

- Formulate or amend FTP **suo moto** (on its own initiative),
- **Without** consulting stakeholders, **if it deems fit**.

So, consultation is **optional** — not a legal requirement.

Handling of Stakeholder Feedback

What happens after feedback is received

- If the government **does not incorporate** the feedback/suggestions in the final FTP, it **may** (on a best-effort basis):
  - Inform stakeholders about **reasons** for not accepting their views.

However, the government is not bound to give reasons if:

The feedback:

- Could harm **India's trade relations** with any foreign country.
- Could affect **food, economic, or national security**.
- Conflicts with **other government policies, programs, or international obligations**.
- Is **unrelated to trade** or represents **private/narrow interests** against the **public good**.
- Would require disclosure of **confidential or classified information**.

No Legal Right Clause

- Stakeholders **cannot claim any legal right** to:
  - Demand reasons for rejection of their feedback.
  - Challenge non-inclusion of their suggestions in court.

So, this process is **consultative, not judicial or enforceable**.

ILLUSTRATIONS

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Illustration (Specific Provisions Applicable to Exports)

CD Corporation, a merchant exporter, procured order of goods from a customer in USA.

It approached AB Corporation, a manufacturer, for execution of the said order.

The shipping bills relating to the consignment bear the name of CD Corporation.

Bank Realization Certificate, export order and invoice are also in the name of CD Corporation.

Comment whether AB Corporation would be deemed as the exporter under FTP.

Illustration 1

Answer the following questions with reference to the provisions of Foreign Trade Policy:

FIintex Manufacturers manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations.

The payment for such supply is received in free foreign exchange.

Can FIintex Manufacturers seek Advance Authorization for the supplies made by it?

XYZ Ltd. has imported inputs without payment of duty under Advance Authorization.

The CIF value of such inputs is Rs. 10,00,000.

The inputs are processed, and the final product is exported.

The exports made by XYZ Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme.

No other input is being used by XYZ Ltd. in the processing.

What should be the minimum FOB value of the exports made by the XYZ Ltd. as per the provisions of Advance Authorization?

'A' has used some duty paid inputs in its export products.

However, for the rest of the inputs, he wants to apply for the Advance Authorization.

Can he do so? Explain

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