PAPER – 19

INDIRECT TAX LAWS & PRACTICE

[GST - VOLUME II]

CMA FINAL

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I really liked your classes, especially the practical linkages explained with amazing graphics. The full subject test serieshelped a lot in improving my writing speed and presentation skills.

Sundar Sri Renganathan B (AIR 33)

I took Accounting from IndigoLearn and the classes were really good. They emphasized on conceptual clarity over getting things done quickly, which is really vital to score good marks in practical papers. Other resources like Notes, Quizzes and Forum was beneficial too.

Dwarakesh

Thank you IndigoLearn team for the guidance and support throughout the past few months. I had great conceptual clarity in all the subjects and the revision classes by Suraj Sir were very helpful. Study planner and Free resources were very useful. Thank you Team IndigoLearn.

Yug Manoj Kumar Bhattad

I have cleared my CA Foundation examination with the total of 286. And this was not possible without the efforts and support of IndigoLearn. The way of teaching with utmost conceptual clarity is the best thing at Indigolearn.

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Good experience, unlimited views helped a lot in last one month preparation. Looking forward for

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It was only because of Indigolearn that my concepts became very clear, and I was able to crack the exam. I wasn't 100% prepared I needed more practice but luckily I got through. I'm definitely choosing IndigoLearn for group 2 preparation. A big thanks!

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Theoretical subjects made easier through story based examples and charts. Concept clarity 100%. Fully exam+practical oriented classes will help not only to retain the concepts during exams but for the longer duration.

Lalit Chetan Sanpal

Indigolearn has been fantastic and brilliant. Helped me alot in my preparations. I cleared both the groups in first attempt with your brilliant classes and notes. Thanks to all the faculties, coordinators, forum admins and everyone at Indigolearn. Really grateful. Will go for CA Finals at Indigolearn For sure. Thank you so much Indigolearn.

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Abishek M

I'd like to thank IndigoLearn for all the support they've provided me with. Modules were great. They were time saving and straight to the point. I extensively used the materials provided before exams, they were so helpful. Also I'd appreciate them for providing unlimited views as I kept looking into the maths modules till the end.

Munnur Nandini Sree

Accounting classes I have taken from IndigoLearn. Now I feel that it's a great choice that I have made (after seeing my result) because only in Accounting I got exemption. Thank you IndigoLearn.

Harshita G

Thank u so much IndigoLearn for your guidance. This is only possible because of u people.... For my finals also my journey will continue with IndigoLearn.

Bharathsha PS

I purchased Economics, IT, FM, EIS and Audit from Indigolearn. All your classes are superb and anyone can easily crack the CA exams. What makes u special is your classes help us to understand the concepts very well.Special thanks to the FM faculty, I studied only 2 chapters in economics,and still managed to score excemption in the 8th paper.

Nayi Mihir kumar

This platform is very helpful in all activity like mcq practise, notes, teaching activities, revisions and the forum interaction with all students which I like the most. If anybody want to clear their exams in first attempt then IndigoLearn is the best platform for them. My all regards to IndigoLearn. Thank you so much.

Rajalaxmi
CA Inter

Can't believe I cleared.Sathya Sir, Suraj Sir, Yogita Mam ... thanks to all my faculties. Basically an Eng student with zero accounts knowledge. Thanks IndigoLearn for making me clear in first attempt.

Priyanka Udeshi

All the faculties have excellent knowledge of the subject and deliver it in very crisp & effective manner. Also, quick response at Forums never let any of my doubts go unresolved no matter how small they were. Thank you once again to all the teachers & staff at IndigoLearn!

Naveen Kumar T

It been a great journey with indigo learn team. Thanks to all the facilities and forum friends who support me a lot.

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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.
- 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

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- 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.
- 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.

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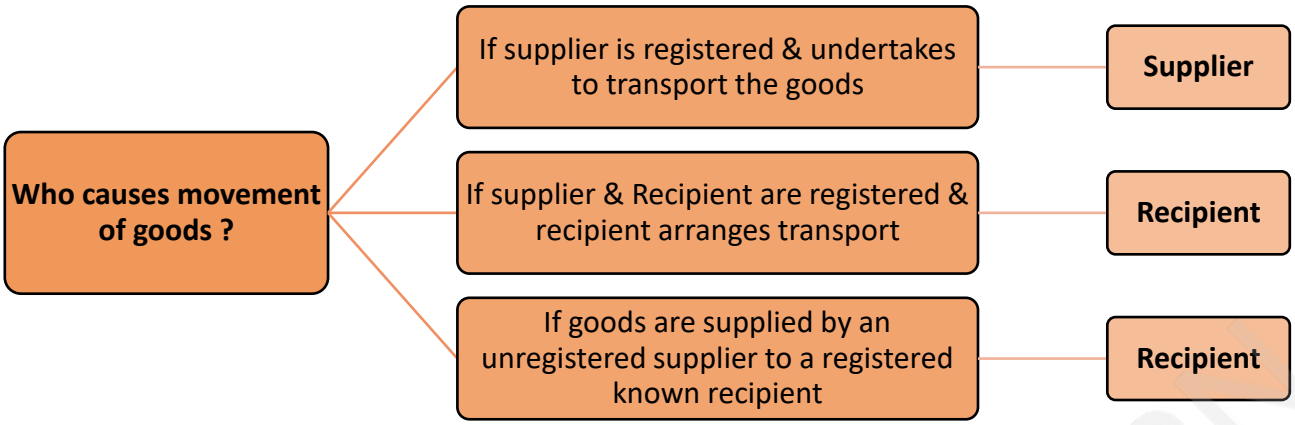
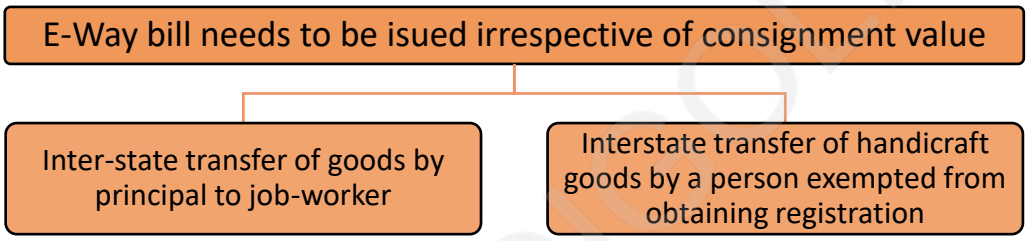
2.3 – Who causes movement of goods?



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



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.

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- 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

An e-way bill Form GST EWB-01 contains two parts

Part A

1. GSTIN of supplier & recipient place of delivery (indicating PIN Code)
2. Documentn number and date(Tax invoice, Bill of Supply, Delivery Challan or Bill of Entry)
3. Value of goods
4. HSN code
5. Reasons for transportation

Furnished by

1. The registered person who is causing movement of goods

Or

2. By the transporter, on an authorization received from such registered person

Or

3. By the e-commerce operator or courier agency, where the goods to be transported are supplied through such an e-commerce operator or a courier agency, on an authorization received from the consignor

Part B

1. Transport details
2. Transporter document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number
3. Vehicle number - in case of transport by road

Furnished by Transporter, the person who is transporting the goods

EWB number generated is valid for a period of 15 days for updation of Part B

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
- ***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

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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.
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.

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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.

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)].

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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}

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***

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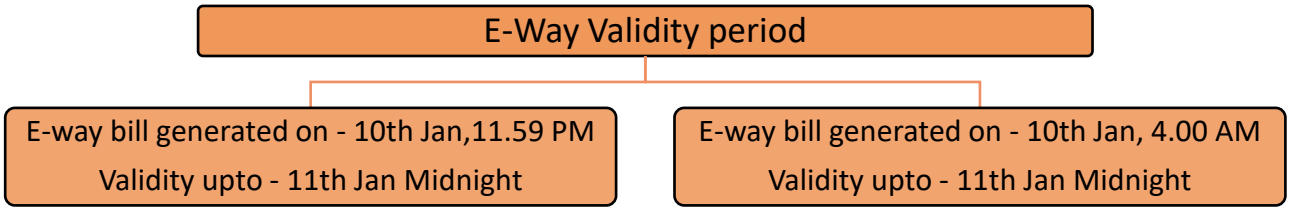

7.6.3 - Extension of validity period

- ***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.
- 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.

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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]
- 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)].

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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***.
- 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.

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- 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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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.

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

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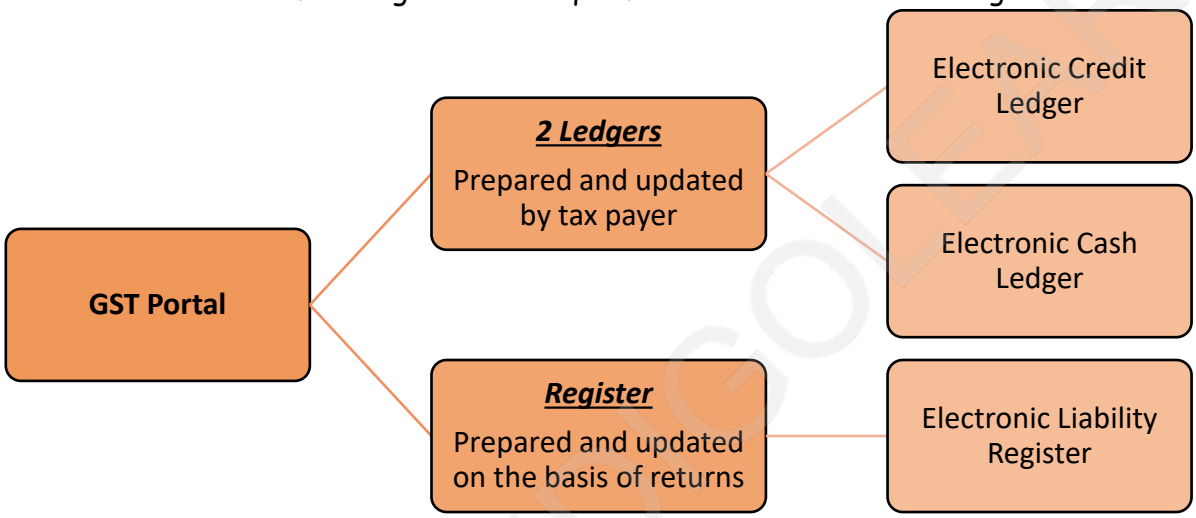
IGST	IGST CGST SGST UTGST	IGST for IGST first Balance IGST of CGST and SGST/UTGST in any order and any proportion
CGST	CGST IGST	1. CGST 2. IGST
SGST/UTGST	SGST UTGST	1. SGST 2. IGST
UTGST	UTGST IGST	1. UTGST 2. IGST

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

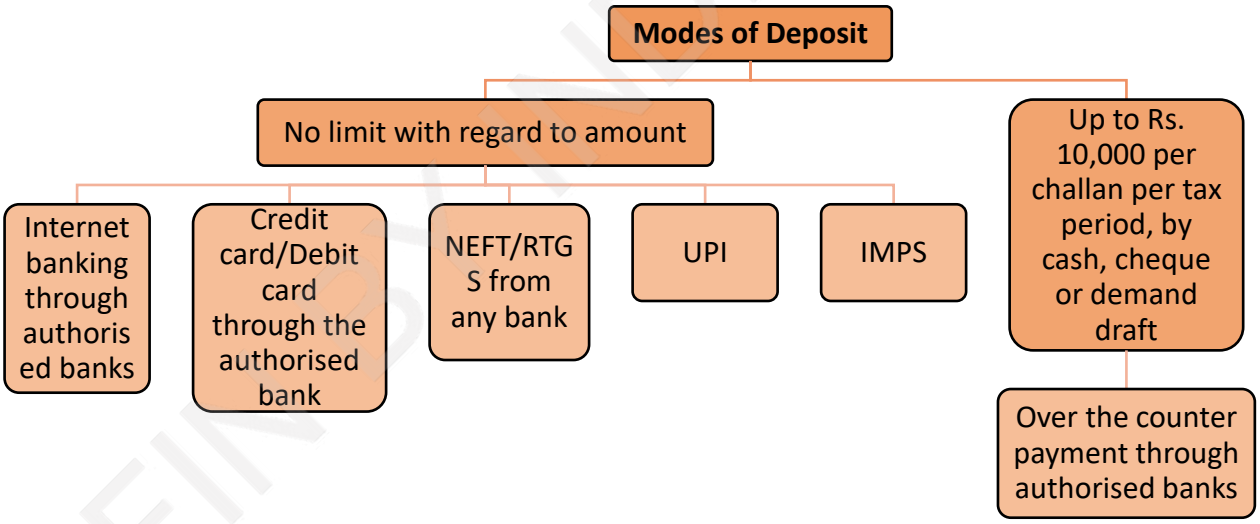
- Sub-section (2) of section 49 of the CGST Act provides that the self-assessed input tax credit (ITC) by a registered person shall be credited to its Electronic Credit Ledger. It is maintained in a prescribed form [GST PMT 02]
- The amount available in the electronic credit ledger may be used for making 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:



- 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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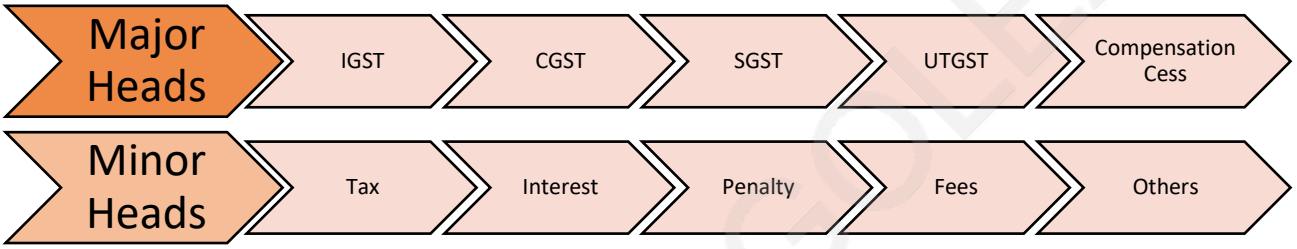
- Where the bank fails to communicate details of Challan Identification Number to the common portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the RBI in cases where the details of the said e-Scroll are in conformity with the details in challan generated in Form GST PMT-06 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.
- 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.

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:

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- 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***

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.
- The liability for interest can be settled by adjustment with balance in Electronic Cash Ledger but not with balance in electronic credit ledger.
- ***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.

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- 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}
- ***Explanation***: This means that the interest would be computed only on the amount paid using cash ledger.

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 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).
- 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:
- 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 - Public sector undertakings, or A society established by the Central or any State Government or a Local Authority and the society is registered under the Societies Registration Act, 1860, or An authority or a board or any other body which has been set up by Parliament or a State Legislature or by a government, with 51% equity (control) owned by the government, (hereafter in this section referred to as "the deductor"),

to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation .-For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in 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.

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.

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.

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.

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***.

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.

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

- 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.

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9. IMPORT OF SERVICE

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

- 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.***

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- 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

- 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 ***essentially automated and involving minimal human intervention*** and
- ***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

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

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- 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.***

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 ***Government, local authority, governmental authority***, an individual or any other ***person not registered*** and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

For the purposes of this clause, the expression ***'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 Panchayat under article 243G or to a municipality under article 243W of the Constitution.

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.

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.***

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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.

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 –

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- 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.

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.

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.

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- 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	A person exclusively making zero rated supplies **needs to register**

	both that are **not liable to tax or wholly exempt** from tax under the CGST or IGST Act shall **not be liable to registration**.	**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.

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.

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. MERCHANT EXPORT

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 –

- 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;

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- 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

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.

Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under section 2(6).

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ILLUSTRATIONS

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

Contents

- Statement of outward supplies [Sec 37]
- Furnishing of returns [Sec 39]
- First return [Sec 40]
- Annual return [Sec 44]
- Final return [Sec 45]
- Notice to return defaulters [Sec 46]
- 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.

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.***

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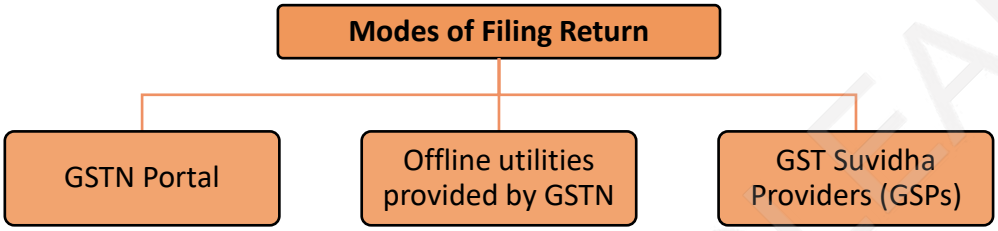
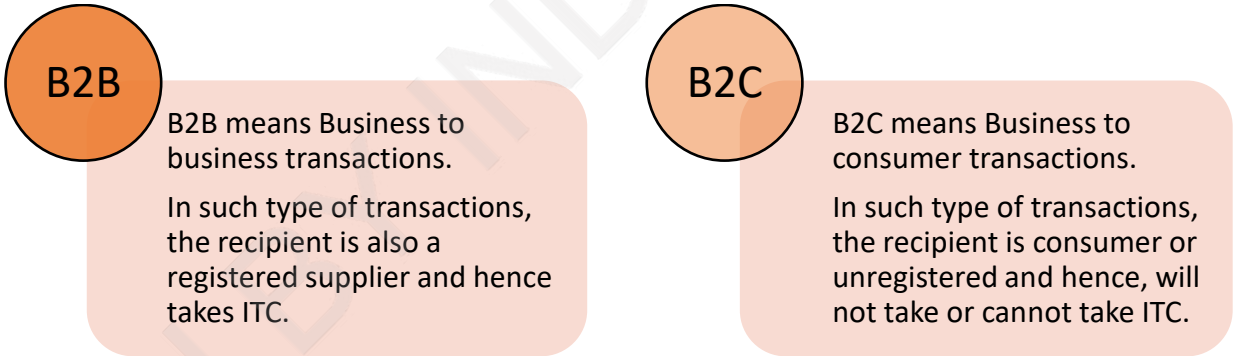
- Taxpayers can file the statements and returns by various modes.
    - Firstly, they can file their statement and returns directly on the GST common portal online. However, this may be tedious and time consuming for taxpayers with large number of invoices.
    - For such taxpayers, offline utilities 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.

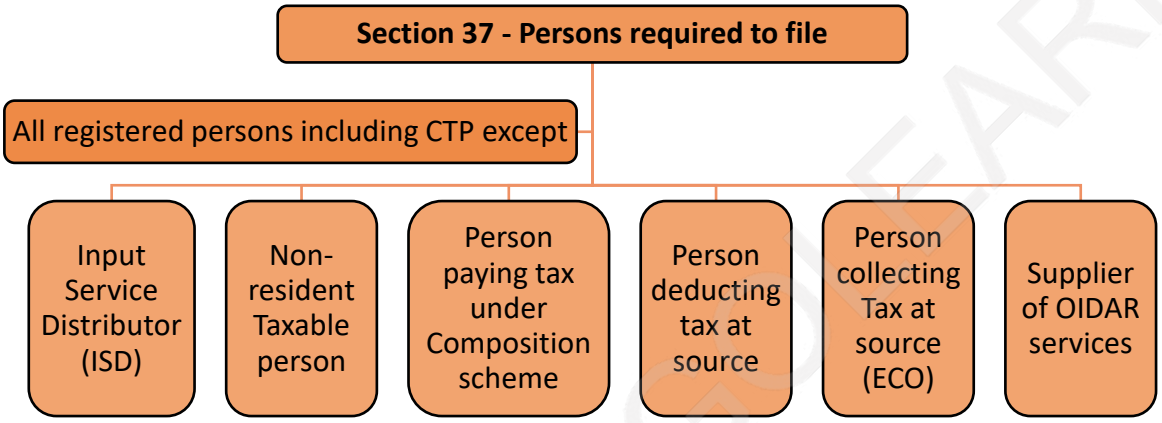


- Invoice wise details needs to be given for B2B supplies whereas consolidated details are given for B2C supplies.
- The return filing process is under review and is yet not finalized. The exact mechanism of the return filing process would be available only after the relevant notifications are issued 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

- 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.

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- 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.

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. 2,50,000
- ***Consolidated details of all invoices have to be given for***
  - Intra-State supplies made to unregistered persons for each rate of tax

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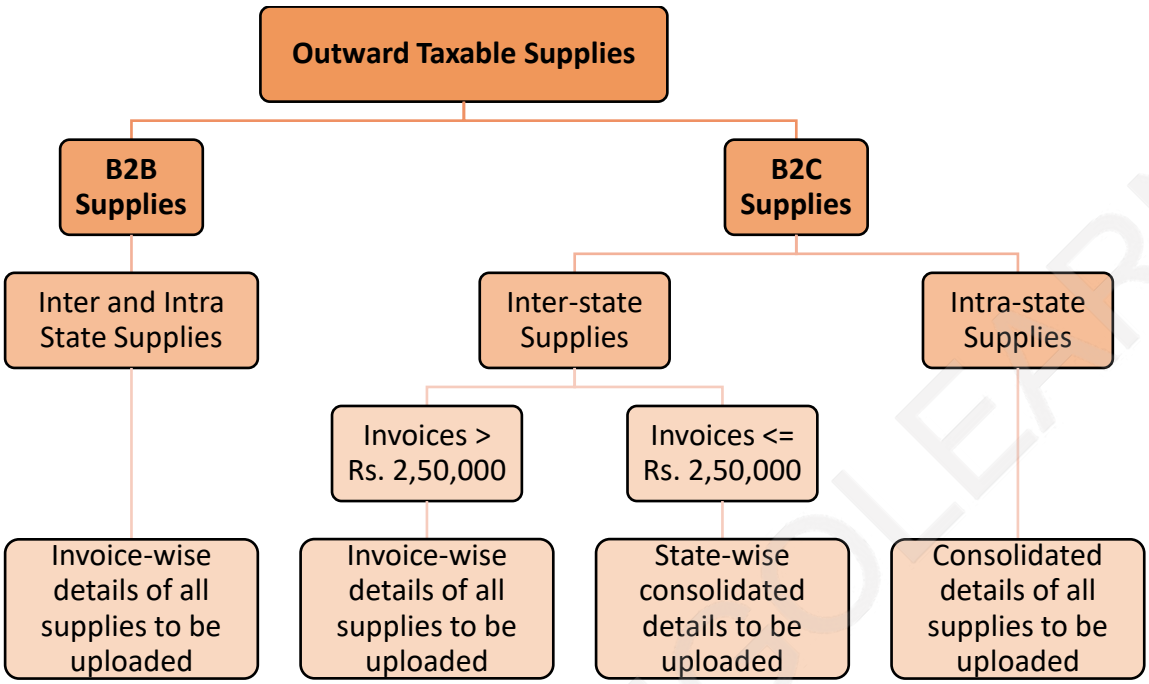
- Inter-State supplies made to unregistered persons with invoice value up to Rs.2,50,000 for each rate of tax separately for each State.

- ***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.

- 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.

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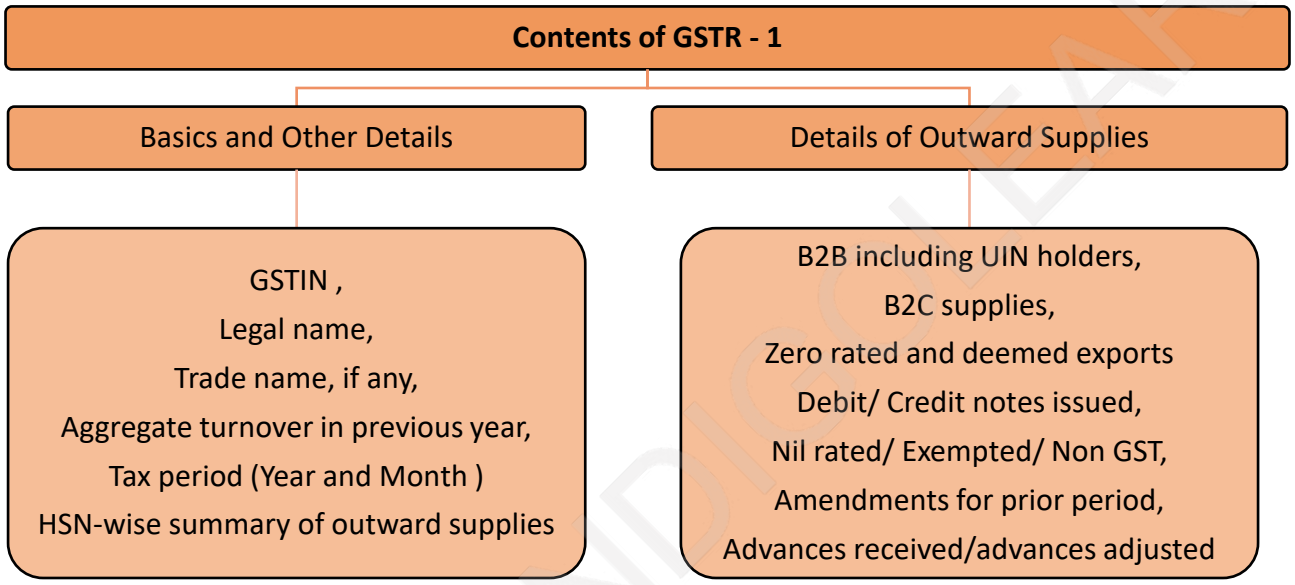
- Since, the ***place of supply is crucial*** for determining the share of every State in the tax revenue, GSTR-1 captures information relating to place of supply for both B2B and B2C supplies.
- GSTR-1 consists of the basic details regarding the business and details of outward supplies.

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/ Form GSTR - 4A*** (in case of registered person opting for composition levy through the common portal after the due date of filing of



GSTR - 1.

- 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.***
- 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.
- 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.

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	24th day of the month succeeding such quarter

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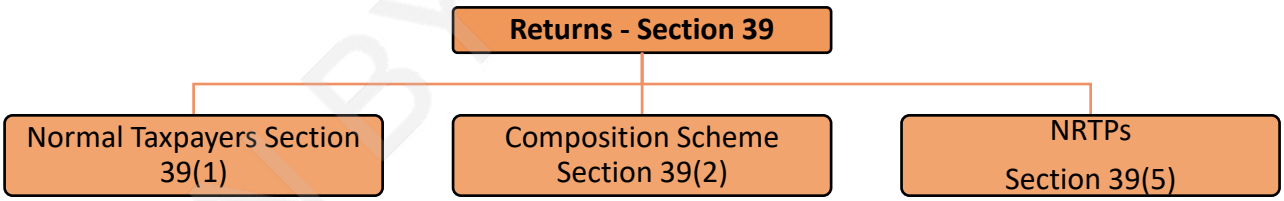
Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	

4. FIRST RETURN – SECTION 40

- 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.

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.
- 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.

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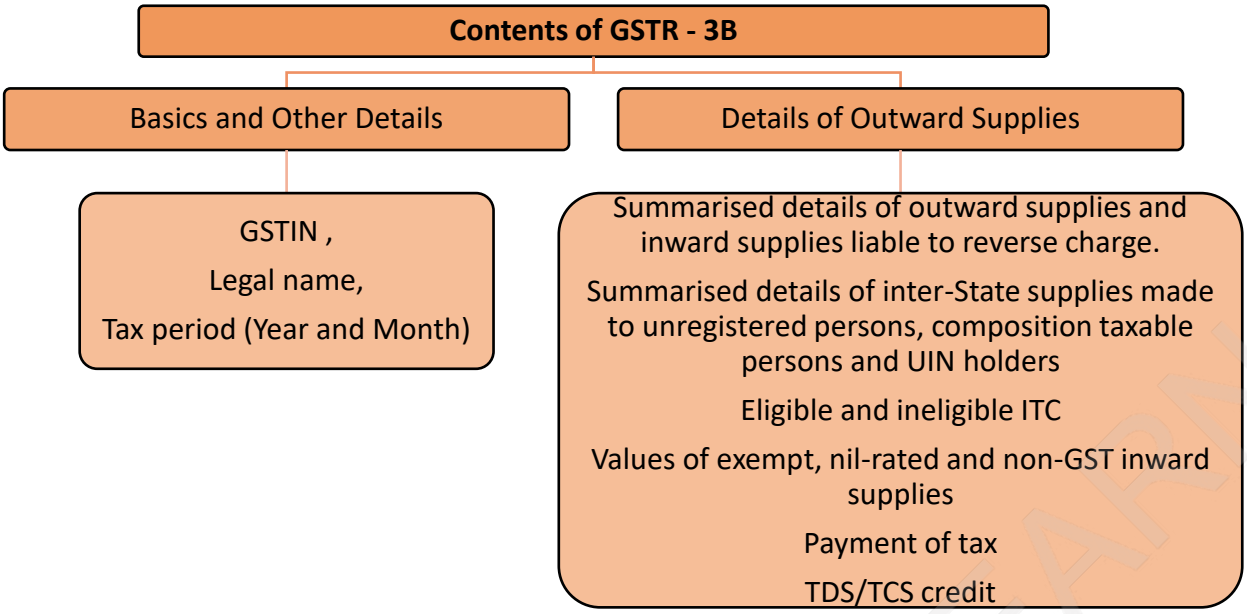
5.1.4 – Contents of GSTR – 3B



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.*

- ***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.

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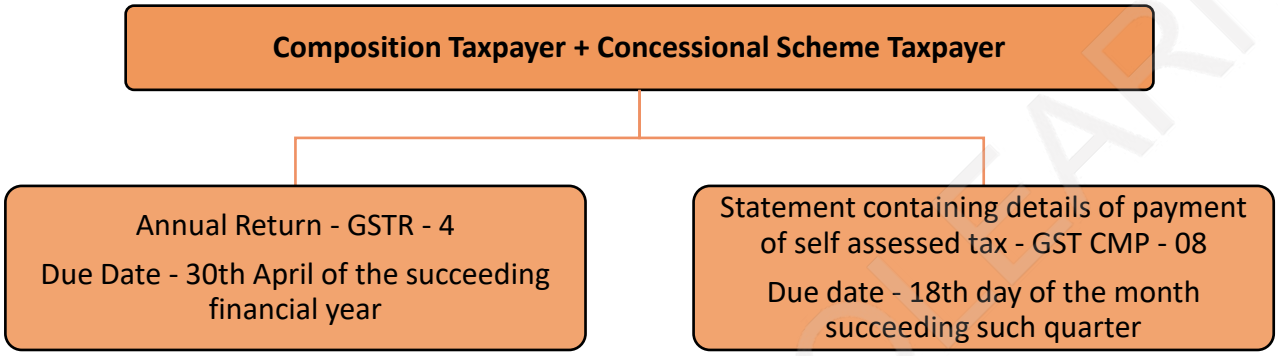
- The persons required to file GSTR-4 are also required to furnish a statement in the Form GST CMP-08 containing details of payment of self-assessed tax, for every quarter (or part of the quarter).
- The due date for filing GST CMP-08 by ***18th day of the month succeeding such quarter***.

> ***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 April of the succeeding financial year***.



- 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***.

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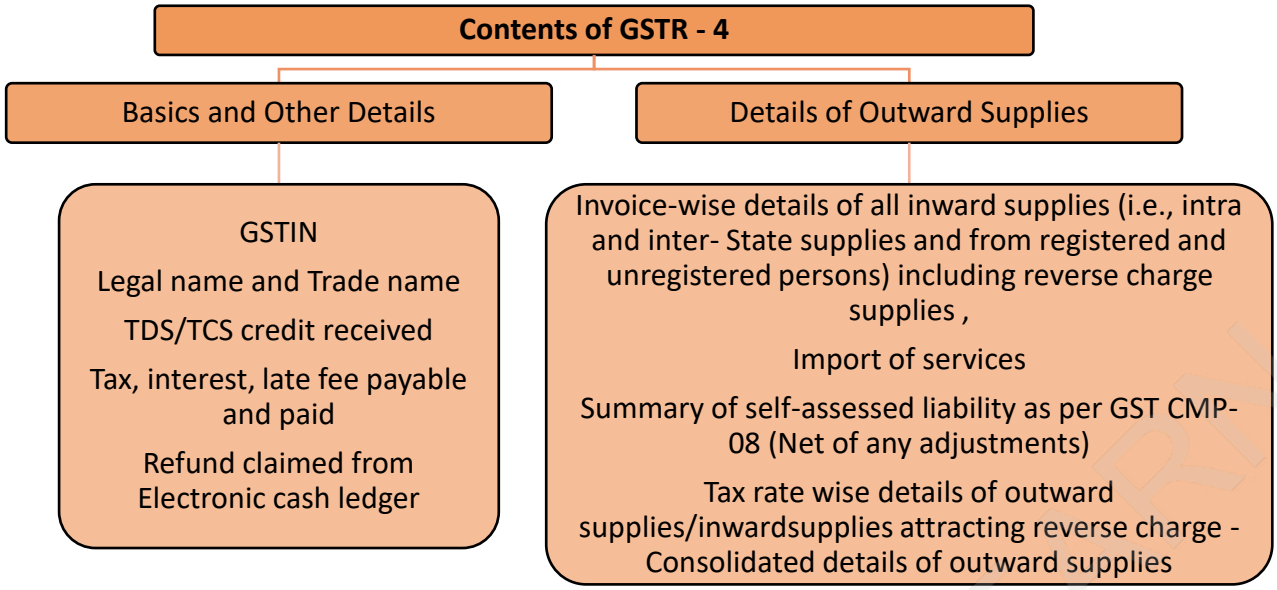
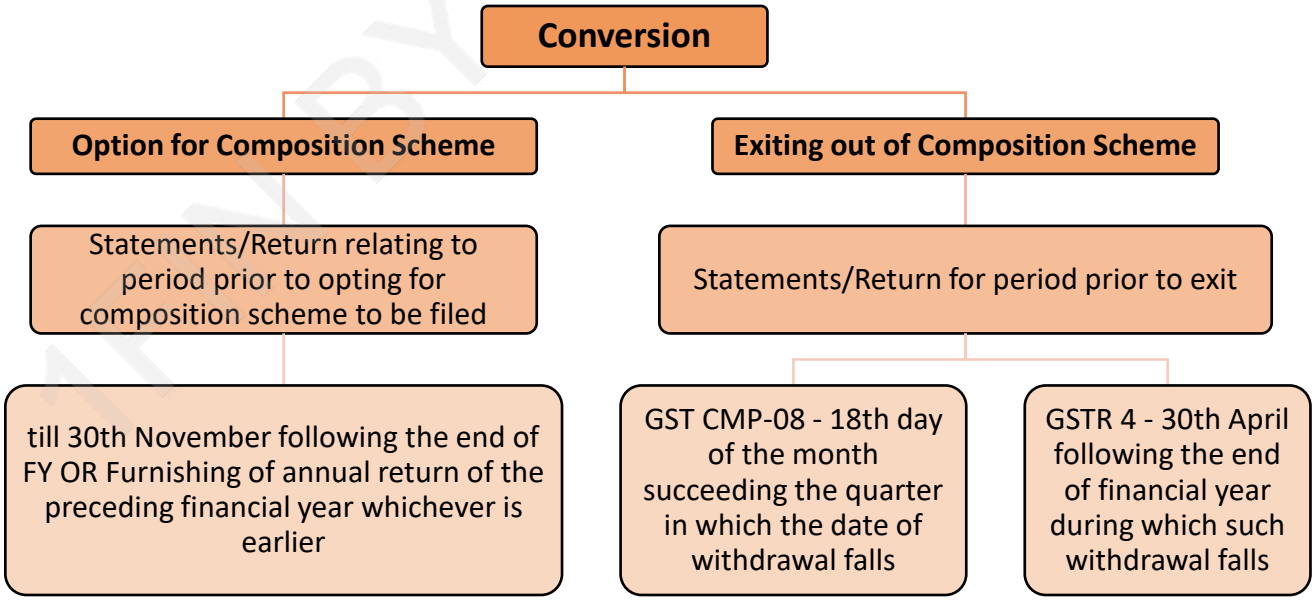
5.2.4 – Contents of GSTR – 4



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 April following the end of the financial year during which such withdrawal falls.



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).
- 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

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- 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.

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

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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

- 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

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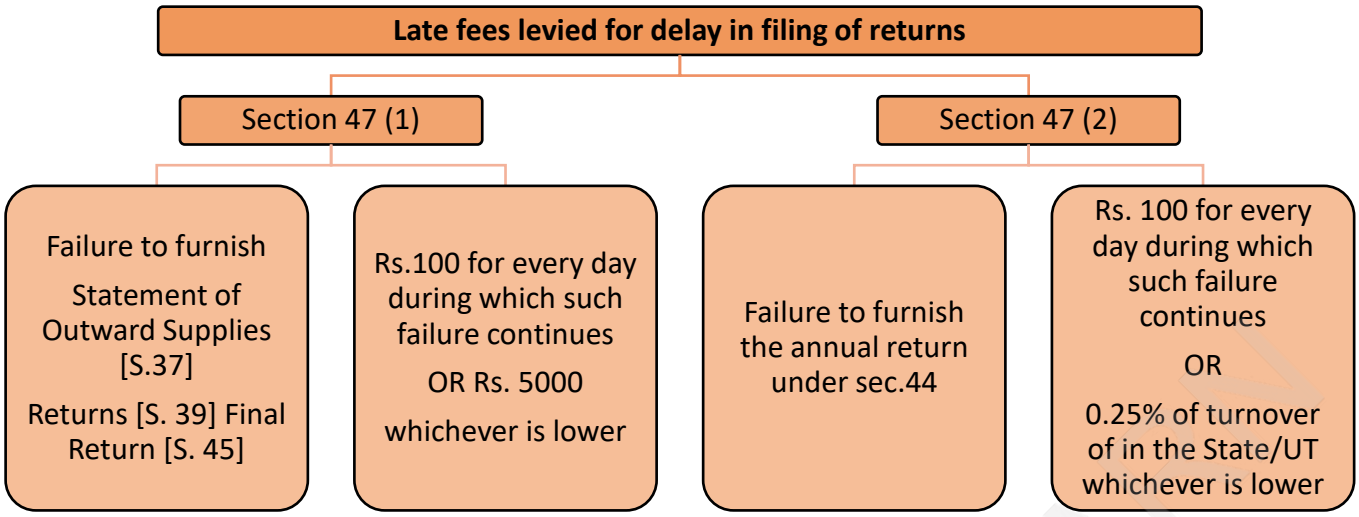
8.2 - Late fees levied for delay in filing return - Section 47



- 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

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

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)

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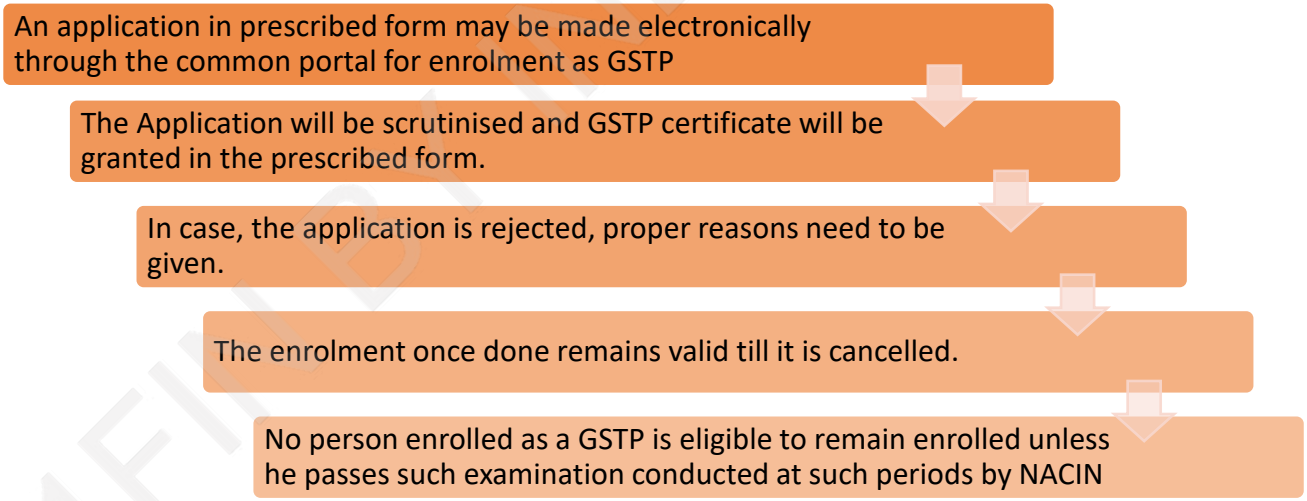
3. Any other examination notified by the Government, on the recommendation of the Council, for this purpose.
4. Any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination
5. Has passed final examination of ICAI/ 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.

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.

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.

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.

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- 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.

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.

E. *Details of GSTR-6 to be available in GSTR-2A of the recipients*

The details of invoices furnished by an ISD in his return will be made available to the respective registered recipients of credit in their GSTR 2A (Form GSTR 4A in case of composition supplier). The recipients may include these in their GSTR-2 (Form GSTR 4 in case of composition supplier) and take credit.

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.
GSTR-11	Details of inward supplies	Persons who have been issued a Unique Identity Number (UIN)	

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ILLUSTRATIONS

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.

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?

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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.

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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.

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.

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***.

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.

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- 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.
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***.

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- 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***.
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***.
- 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***

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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.
- 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.

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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.

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.

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.

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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

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.

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Formula for calculation of refund of ITC –

$$\text{Refund amount} = \frac{\text{Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services}}{\text{Adjusted total turnover}} \times \text{Net ITC}$$

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

   but ***excludes*** –
   - ***ITC availed*** for which refund is claimed under sub-rules (4A) i.e. on ***deemed exports*** or
   - ***ITC availed*** for which refund is claimed under sub-rules (4B) i.e. on ***merchant exports*** or
   - ***Both***.

3. ***Turnover of zero-rated supply of goods*** –

   Turnover of zero-rated supply of goods shall be the lower of –

   - ***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.

     However, it ***shall not include*** the turnover of supplies in respect of which refund is claimed under sub-rules (4A) i.e. deemed exports or (4B) i.e. merchant exports or both.

   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.

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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
   - the turnover of supplies in respect of which refund is claimed under sub-rule (4A) i.e. deemed exports or sub-rule (4B) i.e. merchant exports or both.

   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.

1.18 - Sub-rule 4A and 4B in case of zero-rated supply

Sub-rule 4A –

When the ***supplier*** has availed the ***benefit of deemed exports***, the ***refund of ITC*** availed in respect of other ***inputs or input services*** used in ***making zero-rated supply*** of goods or services or both shall be granted.

Sub-rule 4B –

Where the person claiming refund of unutilised ITC on account of zero-rated supplies without payment of tax has –

- received supplies on which the ***manufacturer*** supplier ***has availed the benefit of supply of goods to merchant exporters*** at the concessional rate of 0.1%, or
- ***availed the benefit of exemption*** from IGST and Compensation Cess, in respect of the ***goods imported by EOU*** or for the ***goods imported under Advance Authorisation or EPCG***,

the ***refund of ITC availed*** in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other ***inputs or input services*** to the ***extent used in making such export of goods shall be granted***.

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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:

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods \& services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods \& services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}$$

The meaning of the terms used above is elaborated herewith –

1. ***Net ITC*** –

   Net ITC ***includes*** –
   - ITC availed on ***input goods***,

   but ***excludes*** –
   - ***ITC availed*** for which refund is claimed under sub-rules (4A) i.e. on ***deemed exports*** or
   - ***ITC availed*** for which refund is claimed under sub-rules (4B) i.e. on ***merchant exports*** or
   - Both.

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
   - the turnover of supplies in respect of which refund is claimed under sub-rule (4A) i.e. deemed exports or sub-rule (4B) i.e. merchant exports or both.

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***.

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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 –

- 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*** –

- 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 –

- ***received supplies*** on which the ***benefit of deemed exports*** against EPCG has been availed, ***except*** so far it ***relates to receipt of capital goods*** or

- 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.

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***.

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.

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- 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***.
- 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):***

   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***.

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- ***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

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).

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- 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

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.

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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.

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

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

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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

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.

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

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

- 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

- The due date of the form is ***25th day of the month*** of the succeeding relevant quarter.
- 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?

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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.

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.

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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.

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.

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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***.

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.

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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.
- 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***.

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***

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***.

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.

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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 –

- 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

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

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.

Illustration 6

Discuss the responsibilities of the person to whom summons has been issued.

Illustration 7

Explain the meaning of 'arrest'.

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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.

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.

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

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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. 25 crore CGST, 25 crore SGST and 50 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 sec 107 (6) Appellate Authority in that, a new proviso was added in January 2022 that no appeal shall be filed against an order under subsection (3) of sec 129 unless a sum equal to 25% of the penalty has been paid by the appellant {In case of detention and seizure of conveyance and goods in transit}

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***.
- 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.

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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.
- 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.

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- 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.

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***.

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***.
- If a person is aggreived by the decision of the principal bench, he can appeal to the ***Supreme Court***.

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***.

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***

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- 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

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***.

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
- 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***.
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

- a sum equal to ***20% 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 20% of payment shall be ***subject to maximum of Rs. 50 crore CGST, 50 crore SGST and 100 crore in case of IGST***.

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

- 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

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***.

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 –

- 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

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***.

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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.

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.

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

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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

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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LIABILITY TO PAY TAX IN CERTAIN CASES

Contents

- Understanding the liabiliity in case of transfer of business
- 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

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 –

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- 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.

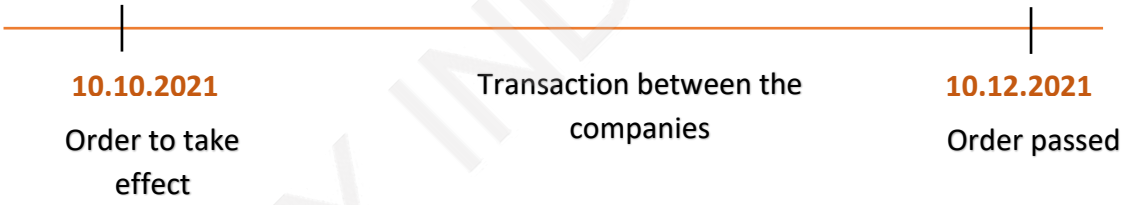
2. LIABILITY OF AGENT AND PRINCIPAL - SECTION 86

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**.



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**.

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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.

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.

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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 –

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.

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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.

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.

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.

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;

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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.

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?

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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 –

- 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

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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***.

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

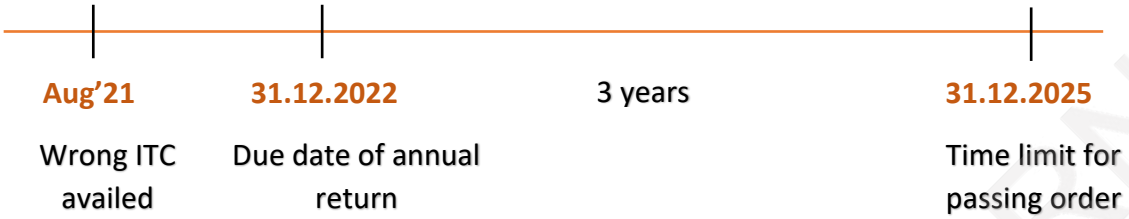
Time limit for issue of order –

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.



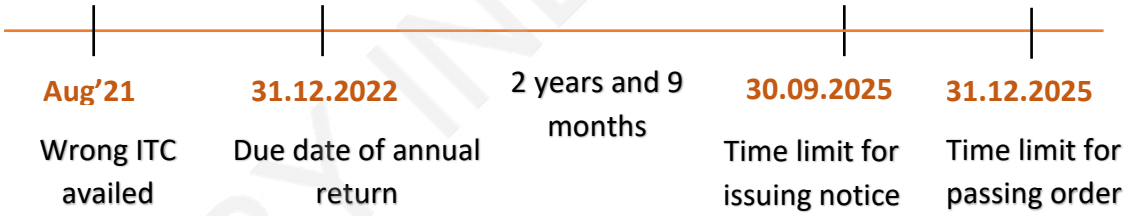
Time limit for issue of notice –

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.

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.



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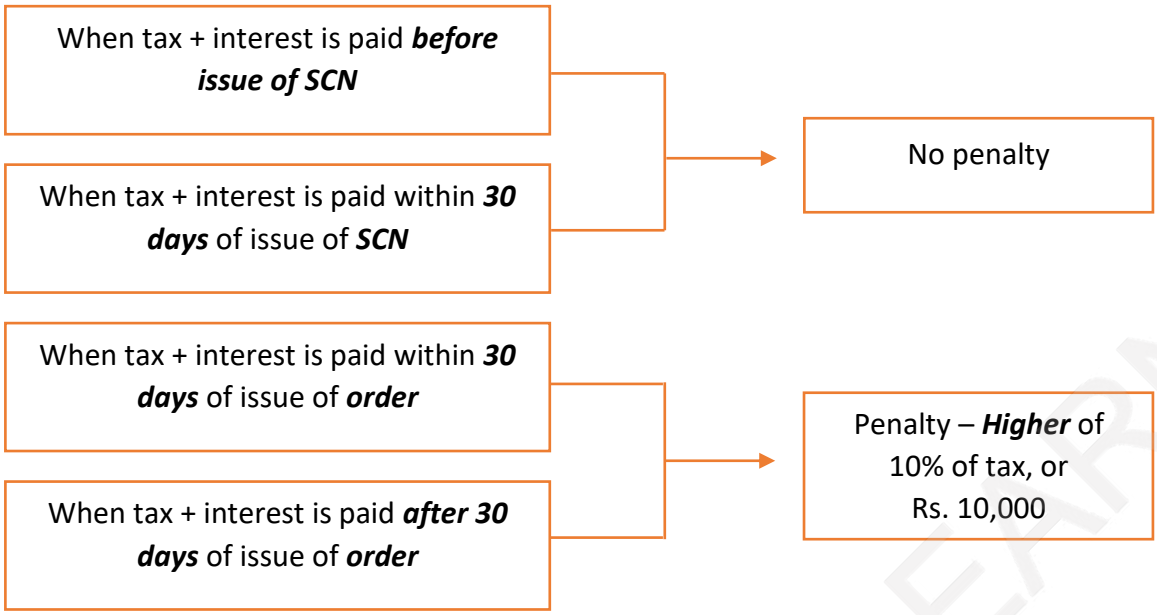
1.7 - Penalty under different situations



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.

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.

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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.

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

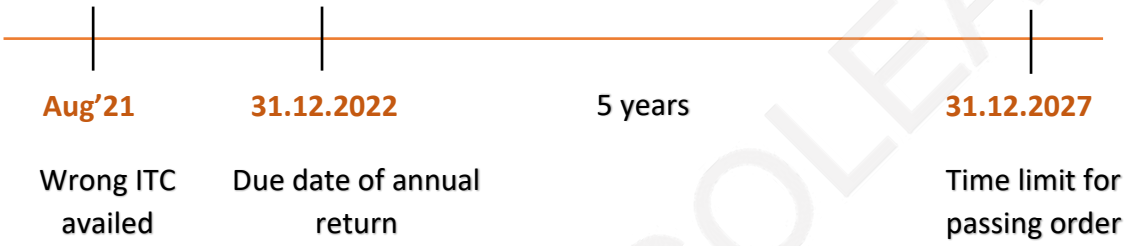
Time limit for issue of order –

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 –

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.

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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.***

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

3. 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.

3.1 - 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.

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.

3.2 - 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***.

3.3 - 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***.

3.4 - 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.

3.5 - 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***.

3.6 - 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.

3.7 - 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

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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 -

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.

3.8 - 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.

4. TAX COLLECTED BUT NOT PAID TO THE GOVERNMENT - SECTION 76

4.1 - 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.

4.2 - 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***.

4.3 - 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.

4.4 - 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.

4.5 - 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.

4.6 - 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.

5. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT - SECTION 77

5.1 - 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.

5.2 - Provisions of the Section

Section 77 prescribes that in the above-mentioned cases, the registered person has to do the following –

- 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.

5.3 – 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.

6. 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***.

7. 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

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7.1 - 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.

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/-.

7.2 - 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***.

7.3 - 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.

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- 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***.

7.4 - 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 –
- 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***.

7.5 - 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***.

7.6 - 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.

7.7 - 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.

7.8 - 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.

7.9 - 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.

7.10 - 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.

7.11 - 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.

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8. PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS - SECTION 80

8.1 - 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.

8.2 - Default in payment of instalment

If there is ***default in payment*** of ***any one instalment on its due date*** then –

- 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.

8.3 - 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/-***.

9. 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.

9.1 - 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***

9.2 - 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***.

10. 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.

11. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES - SECTION 83

11.1 - 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.

11.2 - Other provisions

- The power of provisional attachment lies with the ***Commissioner***.
- He can provisionally attach ***any property, including bank account***.

11.3 - 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***.

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- 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

11.4 - 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

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.

11.5 - 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.

11.6 - 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***.

11.7 - 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***.

11.8 - 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***.

11.9 - 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***.

11.10 - 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.

11.11 - 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***.

12. 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.

13. IMPORTANT DEFINITIONS

13.1 - 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.

13.2 - Appellate authority

Appellate Authority means an authority appointed or authorised to ***hear appeals*** as referred to in section 107.

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13.3 - Appellate Tribunal

Appellate Tribunal means the Goods and Services Tax Appellate Tribunal constituted under section 109.

13.4 - 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.

13.5 - 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.

13.6 - 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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ILLUSTRATIONS

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
- 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?

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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***.

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

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- ***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.

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.

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/-***.

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.

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.

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.
- 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

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***.

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.

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- 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***.

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

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 –

i. ***Supplies any goods or services*** or both ***without issue of any invoice*** with the ***intention to evade tax***;
ii. 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;
iii. ***Avails input tax credit*** using such invoice or bill referred to in clause (b);
iv. ***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;
v. ***Evades tax, fraudulently avails input tax credit or fraudulently obtains refund*** and where such offence is not covered under clauses (a) to (d);
vi. ***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;
vii. ***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***;
viii. 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;
ix. ***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.

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.

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.

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.

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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

- 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.

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- 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)***

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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ILLUSTRATIONS

Ilustration 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

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?

Illustration 5

M/s L and Co., a partnership firm with two partners – Mr. X and Mr. Y, is registered under GST in Kolkata, West Bengal. It is engaged in supplying the materials used for construction related activity.

Mr. X and Mr. Y are friends and each of them also have their own separate sole proprietorship firms engaged in supplying construction material; these firms are registered under GST. Mr. A is the tax consultant of the firm - M/s L and Co.

Mr. X gets an offer from a customer - M/s W Pvt. Ltd., (hereinafter referred to as WPL) - to issue some supply related bills to meet the budget allocated to WPL by their management in relation to civil works. Mr. X shall earn a commission of 20% of the value of supply charged in the supply bills accepted by WPL. Mr. X agrees to share 50% of his earnings with Mr. Y for undertaking the above project. M/s L and Co. needs a bank loan for expanding its business operations and the supply bills issued to WPL will inflate the turnover of M/s L and Co. Mr. X and Mr. Y sought advice from their tax consultant Mr. A as to how to execute the above project for the supply bills to be issued to WPL. Based on the guidance provided by Mr. A, it is executed as follows:

- M/s L and Co. shall issue supply related bills for steel, jelly stone and cement for ` 280 lakh to Mr. X wherein the delivery site shall be of WPL (Bill to Ship to Model).

- Mr. X shall avail and utilise the input tax credit (ITC) on the bill of ` 280 lakh and shall separately enter into a contract with WPL for supply of steel, jelly stone and cement (to be used for construction of foundation of Plant and Machinery) for ` 280 lakh. Further, Mr. X, in his individual capacity, shall issue labour work related bills for ` 40 lakh for the assembly and erection work relating to construction of foundation of Plant and Machinery undertaken at the site of WPL, without actually providing any service. WPL will avail and utilise the ITC on the bills of ` 280 lakh and ` 40 lakh used for underlying supply of goods.

- All inventory registers are updated duly by M/s L and Co. without any actual movement/supply of the material and some e-way bills are also generated on behalf of Mr. X for the supplies made to the work site of WPL.

Mr. A assures Mr. X and Mr. Y that:

- Inventory registers are up to date for material movement.

- Compliances pertaining to e-way bill have been taken care of.

- Money shall be duly realised as per the bills issued.

Mr. X approached his friend - Mr. P, a practicing Chartered Accountant, for seeking his help in above arrangement. However, Mr. P makes Mr. X conversant with the following GST implications that may arise in above arrangement:

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.
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.

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- 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

- 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.

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- 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.

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.

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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

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.

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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

- 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***.

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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.
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.

Illustration 5 (Advance Rulings)

Briefly explain the procedure to be followed by AAR on receipt of application under Section 98 of CGST Act.

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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

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.

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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

- **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 –

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- ***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.

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***.

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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

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 –

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.

REMOVAL OF DIFFICULTIES – SECTION 153, 160, 161, 170 AND 172

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.

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,

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- 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.

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).

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.

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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

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

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- 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

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.

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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

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.

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.

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.

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.

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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.

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 –

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- 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. ANTI-PROFITEERING MEASURE - SECTION 171

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

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- to furnish a ***performance report*** to the GST Council ***by the 10th day of the month succeeding each quarter***.

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***.

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- 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***;
- ***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***.

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31. OFFICERS UNDER CGST ACT - SECTION 3 OF CGST ACT

The hierarchy under CGST Act is –

Principal Chief Commissioners of Central Tax
↓
Chief Commissioners of Central Tax
↓
Commissioners of Central Tax
↓
Additional Commissioners of Central Tax
↓
Joint Commissioners of Central Tax
↓
Deputy Commissioners of Central Tax
↓
Assistant Commissioners of Central Tax

Another hierarchy under CGST Act is –

Principal Directors General of Central Tax
↓
Directors General of Central Tax
↓
Principal Additional Directors General of Central Tax
↓
Additional Directors General of Central Tax
↓
Joint Directors of Central Tax
↓
Deputy Directors of Central Tax
↓
Assistant Directors of Central Tax

Other officers appointed under CGST Act are –

- Commissioner of Central Tax (Audit)
- Commissioner of Central Tax (Appeals)

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- Additional Commissioner of Central Tax (Appeals)
- Joint Commissioner of Central Tax (Appeals)

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.

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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

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 –

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- 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***.

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.

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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